Reg. No. GR/RNP/GOA/32

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Panaji, 10th September, 2009 (Bhadra 19, 1931)

SERIES II No. 24

OFFICIAL GAZETTE

GOVERNMENT OF GOA

Note:- There is one Extraordinary issue to the Official Gazette, Series II No. 23 dated 3-9-2009 from pages 605 to 608 regarding Notices from Department of Elections (Goa State Election Commission).

GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

Watershed Section

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Order

No. 3/3/WS/NWDPRA/9/D.Agri/2009-10/118

Sub: State Level Nodal Agency (SLNA) for watershed under Common guidelines.

Government is pleased to constitute a State Level Nodal Agency (SLNA) to monitor the implementation of all the watershed development programmes in the State, under Common guidelines, as under:

1. Chief Secretary, Government of Goa — Chairman.
2. Secretary (Agriculture) Government of Goa — Member.
3. Secretary (Rural Development) Government of Goa — Member.
4. Representative of National Rainfed Area Authority, Government of India (NRAA), New Delhi — Member.
5. Representative of Ministry of Agriculture and Co-operation, Government of India, New Delhi — Member.
6. Representative of Ministry of Rural Development, Government of India, New Delhi — Member.
7. Chief Conservator of Forests, Panaji, Goa — Member.
8. Chief Engineer, Water Resources Department, Panaji, Goa — Member.
9. General Manager, National Bank for Agriculture and Rural Development (NABARD), Panaji, Goa — Member.
10. Project Director, Rural Development Agency (North Goa), Panaji, Goa — Member.
11. Project Director, Rural Development Agency (South Goa), Margao — Member.
12. Director, Department of Animal Husbandry & Veterinary Sciences, Panaji — Member.
13. Director, Indian Council of Agriculture Research Complex, Ela-Old Goa — Member.
14. Programme Co-ordinator, Krishi Vigyan Kendra (South Goa), Margao — Member.
15. Representative of Voluntary Organization, Project Director, Mineral Foundation of Goa, Panaji — Member.
16. Director of Agriculture — Member Secretary.

Functions of the Committee:

1) Prepare a perspective and strategic plan of watershed development for the State on the basis of plans prepared at the block and district level and indicate implementation strategy and expected outputs/outcomes, financial outlays and approach the Nodal Agency at the central level in the Department for appraisal and clearance.

2) Establish and maintain a state level data cell from the funds sanctioned to the States, and connect it online with the National Level data Centre.

3) Provide technical support to District Watershed Development Units (DWDU) throughout the state.

4) Approve a list of independent institutions for capacity building of various stakeholders within the state and work out the overall capacity building strategy in consultation with NRAA/Nodal Ministry.

5) Approve project Implementing Agencies identified/selected by DWDU/Distirct level committee by adopting appropriate objective selection criteria and transparent systems.

6) Establish monitoring, evaluation and learning systems at various levels (internal and external/ /independent systems).

7) Ensure regular and quality on-line monitoring of watershed projects in the state, in association with Nodal Agency at the central level and securing feedback by developing partnerships with independent and capable agencies.

8) Constitute a panel of Independent Institutional Evaluators for all watershed projects within the state, get this panel duly approved by the concerned Nodal Agencies at the central level and ensure that quality evaluations take place on a regular basis.

9) Prepare State Specific Process Guidelines, Technology Manuals etc. in co-ordination with the Nodal Ministry/NRAA and operationalize the same.

The Committee will meet as and when required but at least once in a Quarter.

This is issued with the approval of the Government vide No. 2992/F, dated 10th August, 2009.

By order and in the name of the Governor of Goa.

S. S. P. Tendulkar, Director of Agriculture and ex officio Joint Secretary.

Tonca-Caranzalem, 21st August, 2009.

Department of Co-operation

Office of the Registrar of Co-operative Societies

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Order

No. 48-8-2001/TS/RCS/III/1585

Read: Letter dated 6-8-2009 from Advocate Prashant Agrawal.

In exercise of powers conferred on me under sub-section (1) of Section 83 of the Goa Co-operativie Societies (Amendment) Act, 2009 and Goa Co-operative Societies Rules, 2003, I, P. K. Patidar, Registrar of Co-operative Societies, Goa, pleased to appoint Prashant Agrawal, Advocate, as Registrar's Nominee for deciding the disputes arising in any of the Co-operative Societies referred to him by the Registrar of Co-operative Societies, Panaji or Asstt. Registrar of Co-operative Societies, Central Zone, Panaji, Dairy Zone, Ponda, South Zone, Margao, North Zone, Mapusa Election Cell-North Goa District, Panaji, Election Cell-South Goa District, Margao as the case may be for the period from 01-09-2009 to 31-03-2010.

P. K. Patidar, Registrar of Co-op. Societies.

Panaji, 4th September, 2009.

Department of Education, Art & Culture

Directorare of Art & Culture

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Order

Ref. No. NO.DAC/7/KA/Gen-Council/ /2009/(PF)/1812

Read: Order No. DAC/7/KA/Gen-Council/2005/ /(PF)/260 dated 06-06-2006.

In exercise of powers conferred by clause (6) of the Constitute of the Kala Academy,

Panaji-Goa, the Government is pleased to appoint Shri Paresh Joshi, Vasco-Goa as Vice-Chairman of Kala Academy, Goa with immediate effect.

This supersedes all earlier orders.

By order and in the name of the Governor of Goa.

Prasad Lolayekar, Director of Art & Culture & ex officio Jt. Secretary.

Panaji, 8th August, 2009.

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Order

Ref. No. NO.DAC/7/KA/Gen-Council/ /2009/(PF)/1813

Read: Order No. DAC/7/KA/Gen-Council/2005/ /(PF)/592 dated 27-09-2005.

In exercise of the powers conferred by clause (5) of the Constitution of the Kala Academy, Panaji-Goa, the Government is pleased to appoint Shri Pratapsingh R. Rane, Speaker of Goa Legislative Assembly, as Chairman of Kala Academy, Goa with immediate effect.

This supersedes all earlier orders.

By order and in the name of the Governor of Goa.

Prasad Lolayekar, Director of Art & Culture & ex officio Jt. Secretary.

Panaji, 8th August, 2009.

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Department of General Administration

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Notification

No. 25/4/95-GA&C

Government of Goa regret to state that Dr. Y. S. Rajasekhara Reddy, Chief Minister of Andhra Pradesh passed away on 2-9-2009 in an Air-crash. As a mark of respect to the departed Leader, the National Flag will fly at Half Mast on September 3, 2009 and on September 4, 2009 in the State of Goa.

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (GA-II).

Porvorim, 3rd September, 2009.

Department of Labour

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Order

No. 28/11/2009-LAB

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Vicco Laboratories Limited, Corlim, and it's workmen represented by the Vicco Laboratories Workers' Union in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Dispute Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said Act"), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal-I of Goa, at Panaji-Goa, constituted under Section 7-A of the said Act.

SCHEDULE

"(1) Whether the method adopted and action taken by the management of M/s. Vicco Laboratories Limited, Corlim, in severing the employer-employee relationship between the five workmen, namely (1) Shri Nilkanth Saperkar, (2) Shri Ramnath Gaude, (3) Shri Rohidas Gaude, (4) Shri Namdev Sawant and (5) Surendra Mulgaonkar and the employer M/s. Vicco Laboratories Limited, Corlim, amounts to termination of services of the workmen with effect from 11-09-2008 and whether such termination is legal and justified?

(2) Whether the demand of the workmen for employment with back wages and continuity in service is legal and justified?

(3) Depending on answers to (1) and (2) above, what relief the workmen are entitled to?"

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 21st August, 2009.

Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 20-03-2009 in reference No. IT/25/91 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 15th June, 2009.

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IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/25/91

Mr. Bharat K. Naik,
H. No. 65, Petter, Carambolim,
Ilhas- Goa. … Workman/Party I

V/s

M/s. Amlani Centre,
Near Hotel Nova-Goa,
Panaji-Goa. … Employer/Party II

Workman/Party I – Adv. P. J. Kamat.

Employer/Party II – Adv. A. V. Nigalye.

AWARD

(Passed on this 20th day of March, 2009)

1. By order dated 25-4-91, the Government of Goa in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Dispute Act, 1947 (Central Act 14 of 1947) has referred the following dispute for adjudication of this Tribunal.

"(1) Whether the action of the management of M/s. Amlani Centre, Panaji, in terminating the services of Mr. Bharat K. Naik, Counter Salesman, with effect from 6-7-90 is legal and justified?

(2) If not, to what relief the workman is entitled ?"

2. Notices were issued to both parties. The Party I has filed his claim statement at Exb. 5 and the Party II has filed its written statement at Exb. 9. The rejoinder of the Party I is at Exb. 10.

3. The Party I has stated that he was employed with the Party II as a Counter Salesman since 1-9-88, on monthly salary of Rs. 550/-. The Party I has stated that on 5-7-90, Shri Murad Amlani, one of the partners of the Party II, paid his salary for the month of June, 1990 and five days of July and told him not to report for work from 6-7-90. The Party I has stated that termination of his services is in contravention of Sec. 25F of the Act and the same is illegal. The Party I has therefore sought re-instatement with all consequential benefits.

4. The Party II has stated that, on 5-7-90 the Party I had collected his dues and had voluntarily abandoned the services stating that he had secured a better job. The Party II therefore claims that the Tribunal has no jurisdiction to decide the reference. The Party II has further stated that by letter dated 21-2-92, the Party I was informed that he was free to resume service within 10 days from the receipt of the letter. The Party II has also stated that the reference is bad since no demand was made on it. The Party II has denied having contravened provisions of Sec. 25F of the Act or having terminated the services of the Party I. The Party II has therefore claimed that the Party I is not entitled for any relief.

5. Based on the aforesaid pleadings, the following issues were framed:

1. Does Party No. I prove that his services were illegally terminated by Party No. II as alleged ?
2. Does Party No. prove that Party No. I voluntarily abandoned his services ?
3. Whether Party II proves that this Tribunal has no jurisdiction to decide the reference as Party I voluntarily abandoned the service after collecting all his legal dues and there is no termination of his services by Party II?
4. Whether Party II proves that there is no Industrial Dispute as no demand was made by Party I on Party II and hence reference is bad?

4A. Whether the Party II proves that it is not an "Industry" or "Industrial establishment" within the meaning of the I. D. Act, 1947 and hence this Tribunal has no jurisdiction to decide the reference?

5. Whether Party No. I is entitled to any relief?
6. What Award or Order?

5. Learned Adv., Shri P. J. Kamat has filed written argument on behalf of the Party I and Learned Adv. Shri Nigalye has filed written argument on behalf of the Party II. I have perused the records and considered the arguments advanced by the respective parties.

6. *Issue Nos. 1, 2 & 3:* It is not in dispute that the Party I had worked for the Party II as a counter salesman from 1988 till 5-7-90. The Party I has claimed that his services were orally terminated w.e.f. 6-7-90. Whereas the Party II has claimed that

the Party I had abandoned the services w.e.f. 6-7-90. Hence the questions which fall for determination are whether the services of the Party I were terminated or whether the Party I had abandoned the services w.e.f. 6-7-90.

7. In support of his claim the Party I has examined himself. He has deposed that on 5-7-90 the Party II had orally told him not to report for work. He has deposed that he was paid five days wages for the month of July, 1990. He has deposed that he was neither given a notice nor paid the compensation. He had a complaint to the Labour Commissioner on 6-7-90, copy of which is produced at Exb. 8. He has denied the suggestion that he had abandoned the service on 6-7-90.

8. The evidence of the Party I viz-a-viz the complaint dated 6-7-90 at Exb. 8 clearly indicates that Party II had asked him not to report for work w.e.f. 6-7-90. As against this, Ramzan Ali Ismail has deposed that, on 5-7-90, the Party I had told him that he was leaving the job as he was getting a job elsewhere. He has deposed that the Party I had collected all his dues. It may be mentioned that the Party II has not examined any other employee to corroborate the said statement made by Ramzan Ali Ismail and has also not adduced any evidence to prove that the Party I had collected all his dues. As stated earlier on 6-7-90 itself the Party I had complained to the Labour Commissioner that on 5-7-90. Shri Murad Amlani, one of the partners of the Party II had paid his salary and had orally told him not to report for work w.e.f. 6-7-90. The Party I had complained to the Labour Commissioner that he was not given any notice and was not paid leave wages. The Party I had sought intervention of the Labour Commissioner to ensure his re-instatement. If at all the Party I was leaving the job for better prospects then there would be no reason for him to raise the dispute. The fact that the Party I had lodged the complaint on the date of the termination shows that the Party I had no intention of abandoning the services and this itself falsifies the contention of the Party II that the Party I had left the services as he had got a better job.

9. The Party I has also produced the failure report (Exb. W-1) submitted by the Labour Commissioner. A perusal of the said failure report at Exb. W-1 indicates that the Party II had not appeared before the Labour Commissioner. It may be mentioned here that in his evidence before the Tribunal Ramzan Ali Ismail has stated that he had not received the copy of the complaint made by the Party I. It is pertinent to note that the Party II had not made any such averments in the written statement. It was also not averred in the written statement that the partners of the Party II were not aware of the complaint lodged by the Party I or about conciliation proceedings initiated by the Labour Commissioner. On the contrary, the Party II had averred that they had not attended the conciliation proceedings as the Party I had abandoned the service and had not raised any demand on the Party II and as such there was no question of attending the said conciliation proceedings. These pleadings falsify the contention of the witness Ramzan Ali Ismail that he had not received the copy of the complaint. The conduct of the Party II in not attending the conciliation proceedings and not reporting to the Labour Commissioner that the Party I had voluntarily left the service, itself proves that the defence raised is by way of an afterthought and hence cannot be believed.

10. The correspondence between the parties at Exb. W-2 till W-9 colly indicates that during the pendancy of the proceedings the Party II had given an offer to the Party I to resume duties. The material on record indicates that the Party I had resumed duties on 10-3-92, however, there seemed to be a dispute between the parties whether the Party I should work as a fresh appointee or whether he should be given continuity in service, back wages etc. This unresolved dispute only led to the parties making allegations and counter allegations against each other, without there being any further change in the fact situation. In my considered view, these subsequent events are not material to decide the issue whether the Party I had abandoned the service or whether his services were terminated.

10. In the case of G. K. Medeker v/s Zenith Safe MFG Co. & Ors. reported in 1996 I CLR 172, the Hon'ble High Court has held that *"In cases of voluntary abandonment of service, it is a matter of intention. It depends on facts of each case. It is a matter of inference being drawn on given set of facts. The employer unilaterally cannot say that the workman is not interested in employment. It is for this reason that a domestic enquiry is required to be held. Even before the Labour Court, the employer is required to prove clearly by evidence that the workman had voluntarily abandoned his service. If the Labour Court finds that there is no evidence led by the employer and if the Labour Court finds that it is word against word, then the benefit goes to the workman and not the employer. The primary onus to lead evidence to prove voluntary abandonment of service is on the employer".* In the instant case the Party II has not proved that the Party I had collected the dues and had abandoned the services w.e.f. 6-7-90. On the contrary, the evidence of the Party I viz-a-viz the complaint dated 6-7-90, addressed to the Labour Commissioner proves that his services were orally terminated without assigning any reasons or

paying any compensation and there is absolutely no reason to disbelieve this evidence. Since the evidence adduced by the Party I proves that his services were terminated, and consequently the Tribunal has jurisdiction to decide the reference. Under the circumstances, the issue No. 1 is answered in the affirmative and issues Nos. 2 & 3 are answered in the negative.

11. *Issues No. 4 & 4A:* The Party II has claimed that it is not an industry. The Party II has further claimed that there is no industrial dispute since the Party I had not made any demand on it and hence the reference is bad.

12. Learned Adv., Shri Nigalye has argued that the Party II cannot be termed as an industry since it had engaged barely two or three employees. He has relied upon the judgment of the Apex Court in the case of Bangalore Water Supply and Sewerage Board v/s A. Ragappa 1973 Lab IC 467 and the judgment of the Bombay High Court in the case of Umashanker Jaiswal v/s Royal Auto Centre represented in 1981 CLR 70.

13. It may be mentioned that in the case of Bangalore Water Supply (supra), the Apex Court has held that 'Any enterprise if it satisfies the triple test viz. (1) An organized systematic activity, a purposeful pursuit. (2) Organised productive co-operation between employer & employee of which the direct and substantial element is commercial. (3) For production and distribution of goods and services calculated to satisfy the human wants or wishes (not spiritual or religious but includes material things or services geared to celestial bliss e.g. Large scale manufacture of prasaad or food). In the instant case, the Party II is a general provision stores. The Party I has deposed that besides him, four other employees namely Estelo Mendes, Devidas Gadiker, Prakash Bhappa and one Luisa were employed by the Party II. He has deposed that he, Prakash, Devidas were working as counter salesman, Estelo Mendes was working as sales representative and Luisa was preparing the bills. He has deposed that Mr. Estello Mendes used to collect orders from various shops and as per the said order they used to hand over the goods to Mr. Mendes. The said goods were delivered to the concerned parties as per the orders taken by Estello Mendes. He has deposed that he or Prakash or Devidas used to deliver the said goods. Mr. Mendes used to collect the cash from the concerned parties and hand over the same to Mr. Murad. The aforesaid evidence clearly indicates that there was employee-employer relationship between the Party I and the Party II and the Party II/employer was carrying on systematic activity of sale of goods to the customers and distribution of goods with co-operation of the employees. Hence, the Party II establishment is an industry within the meaning of Sec. 2(j) of the Act. Hence issue No. 4A is answered in the negative.

14. The Party I had averred in para 9 of the claim statement that he had raised the dispute of illegal termination on 6-7-90 before the Commissioner, Labour & Employment and that the Conciliation Officer & ALC Panaji had called the parties for discussion. The Party I had further averred that the Party II did not attend the discussion and the failure was recorded. The Party I has produced the letter dated 6-7-90 (Exb. 8) as well as the failure report at Exb. W-1. A perusal of these documents indicate that the Party I had raised the dispute before the Labour Commissioner and the Party II had failed to appear in the conciliation proceedings. In para 6 of the written statement the Party II had claimed that it had not attended the conciliation proceedings as the Party I had abandoned the service and had not raised any demand on the Party II. These pleadings clearly indicate that the Party II was aware of the dispute raised before the Labour Commissioner but had not attended the conciliation proceedings on the ground that the Party I had abandoned the service and had not raised demand on it.

15. In the case of Shambu Nath Goyal v/s Bank of Baroda AIR 1978 SC 1088, the Industrial Tribunal had rejected the reference of the Government regarding illegal dismissal of the Bank employee on the ground that he had not raised demand oral or in writing, before he approached the Conciliation Officer suggesting that there existed no dispute in that regard. The Apex Court held that the Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. It was held that for coming into existence of an Industrial Dispute a written cause is not a sine qua non unless of course in the case of public utility service because Sec. 22 forbids going on strike without giving a notice. It was held that the demand can be inferred from other acts and notwithstanding the fact that no separate written demand was made and yet surrounding facts disclose that the workman had demanded reinstatement persistently, the reference could hardly be rejected stating that there was no demand.

16. In the case of Sadhu Ram v/s Delhi Transport Corporation 1983 II LLJ 383, the High Court had quashed Labour Court award for re-instatement on

ground that workman had not raised any demand with management and therefore there was no Industrial Dispute. The Apex Court held that it was not proper for the High Court to substitute its judgment for that of the Labour Court and held that the workman had raised no demand with management. It was held that there was a conciliation proceeding, the Conciliation Officer had so reported to the Government. The Government was justified in thinking that there was no industrial dispute and referring it to the Labour Court.

17. In the instant case, the Party I had raised a dispute before the Labour Commissioner, who had initiated conciliation proceedings and submitted failure report to the Government and hence the Government was justified in referring the dispute to the Tribunal. Hence issues No. 4 and 4A are answered in the negative.

18. *Issue Nos. 5 & 6:* The Party I was in continuous service of the Party II since 1st September, 1988 and his services were terminated w.e.f. 6-7-90. It is not in dispute that the services of the Party I were not terminated as a matter of punishment by way of disciplinary action. The case of the Party I is also not covered by any other exclusory clauses of Sec. 2(00) of the Act. In the case of Gammon India Ltd., v/s Shri Niranjan Das reported in 1984 I LLJ 233. The Apex Court has held that where the termination of service does not fall within any of the excluded categories, the termination would be ipso facto retrenchment. In the case of New Allenberry Works v/s Industrial Tribunal-cum--Labour Court, Faridabad, reported in 1996 (72) FLR pg. 38 (sum), the Punjab and Haryana High Court has held that once it is held that there was no abandonment on the part of the workman, it must follow that the termination would amount to retrenchment. In the instant case, the Party I had not abandoned his service and the termination does not fall in any of the excluded categories of Sec. 2(00) of the Act. Hence the termination is held to be retrenchment.

19. The Party I has deposed that he was neither given notice nor paid any compensation. The Party II has neither controverted this evidence nor adduced evidence to prove that it had complied with mandatory provisions of Sec. 25F of the Act. Failure to comply with the mandatory provisions of Sec. 25F renders the termination ab initio void. Under the circumstances, the termination of the services of the Party I by the Party II is held to be illegal and unjustified.

20. It is a settled law that the finding that the termination is illegal does not lead to automatic reinstatement or grant of back wages. It is well settled that the Industrial Court while exercising powers u/s 11 A of the Industrial Dispute Act, is required to take into consideration a host of factors and one of the important factors which needs to be considered is the length of service which the workman has rendered with the employer. In the case of G. M. Haryana Roadways v/s Rudhan Singh (2008) 5 SCC 591, the Apex Court has held that if the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, would be wholly inappropriate.

21. In the instant case, the Party I was in employment of the Party II for less than two years. The dispute was raised in the year 1990 and nineteen years have lapsed since then. The period from date of termination till the award is quite large compared to the period of service rendered. It is also to be noted that in the evidence of the Party I which was recorded before this Tribunal in 1997, the Party I had stated that he is unemployed since the date of his termination. He had further stated that he was occasionally working as a driver. Considering the time gap between the date of the said statement and the date of the award, it is plausible that the Party I is presently gainfully employed. In view of all these factors, in my considered opinion, this is not a fit case to grant relief of re-instatement and back wages. In my considered view, the interest of justice would be met if the Party I is paid Rs. 15,000/- as compensation. Issues Nos. 5 & 6 are answered accordingly.

22. Under the circumstances, and in view of discussion supra, I pass the following order:

ORDER

1. The action of the management of M/s. Amlani Centre, Panaji, in terminating the services of Mr. Bharat K. Naik, Counter Salesman, with effect from 6-7-90 is illegal and unjustified.

2. The Party I is entitled for compensation of Rs. 15,000/-.

Inform the Government accordingly.

Sd/-
(A. Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

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Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 10-02-2009 in reference No. IT/16/08 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 15th June, 2009.

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IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT-I
AT PANAJI

(Before Smt. Anuja Prabhudessai,
Presiding Officer)

Ref. No. IT/16/08

Shri Ashok Kauthankar
and 26 others,
Rep. by Kadamba Kamgar Union,
T-1, Sindur Bldg.,
Opp. Passport Office,
Panaji, Goa. … Workmen/Party I

V/s

M/s. Kadamba Transport
Corporation Ltd.,
East Wing, Bus Terminus,
Paraiso de Goa,
Alto-Porvorim, Goa. … Employer/Party II

Workmen/Party I - Adv. A. Kundaikar.

Employer/Party II - Adv. C. J. Mane.

AWARD

(Passed on this 10th day of February, 2009)

1. By order dated 24-4-08 Government of Goa has referred the following dispute for adjudication of this Tribunal.

"(1) Whether the demand of the Kadamba Kamgar Union for regularization of services of the following twenty seven workmen of M/s. Kadamba Transport Corporation Limited, on completion of 240 days of continuous service is legal and justified?

1. Shri Ashok Kauthankar, Driver Badge No. 3586
2. Shri Pratap Parab, Driver Badge No. 2973
3. Shri Shamsunder Sawal, Driver Badge No. 7173
4. Shri Purshottam M. Naik, Driver Badge No. 2877
5. Shri Mukund R. Sawant, Driver Badge No. 2728
6. Shri Antonio Cunha, Driver Badge No. 5140
7. Shri Sanjiv T. Mandrekar, Driver Badge No. 2978
8. Shri Shivram Kerkar, Driver Badge No. 6113
9. Shri Dayanand Vaigankar, Driver Badge No. 6073
10. Shri Shashikant G. Naik, Driver Badge No. 3211
11. Shri Julio Fernandes, Driver Badge No. 5570
12. Shri Pedro D'Costa, Driver Badge No. 2824
13. Shri Dilip R. Pednekar, Driver Badge No. 7036
14. Shri Dayanand R. Bandodkar, Driver Badge No. 6323
15. Shri Anil Pednekar, Driver Badge No. 6174
16. Shri Asif R. Khan, Driver Badge No. 4593
17. Shri Jaivikrant Amonkar, Driver Badge No. 1297
18. Shri Shyam A. Tuyenkar, Driver Badge No. 2991
19. Shri Basvani Kadri, Driver Badge No. 5034
20. Shri Dattaram B. Gawas, Driver Badge No. 4576
21. Shri Earnesto de Gama, Driver Badge No. 4527
22. Shri Kusha M. Naik, Driver Badge No. 7167
23. Shri Ramdas P. Mandrekar, Driver Badge No. 4359
24. Shri Dyaneshwar Naik, Driver Badge No. 2143
25. Shri Sayed Noor Phir, Driver Badge No. 1852
26. Shri Andrew Lopes, Driver Badge No. 2114
27. Shri Narayan Rawal, Driver.

2. On receipt of the said reference IT/16/08 was registered. Notices were issued to both parties. The Party I filed its claim statement at Exb. 4. The Party II filed its written statement at Exb. 6

3. It is not in dispute that pursuant to the advertisement issued by the employer, in the local newspapers, the workmen involved in this reference had applied for the posts of drivers. These workmen were selected as heavy vehicle drivers. The prerequisite was that the services shall be initially for a period of three months and thereafter be made regular basis subject to satisfactory performance. On successful interview the workmen joined the services and were posted at different depots depending upon the requirements. The Party I states that before the appointment the workmen were employed in private transport and left the former employment on account of perma-

nent posting in the designation and that they have rendered unblemished service. The workmen were appointed against the existing vacancies and on the basis of registration and sponsorship by the employment exchange and the names of the selected candidate were furnished to the employment exchange whereby the registration of the workmen with employment registration office was cancelled, and were recruit for permanent work. The Party I stated that to deny regularization and keep them on daily wages perpetually is unjust and arbitrary. The Party I has stated that they were entitled for regularization on completion of 240 days continuous service. The Party I has stated that in the advertisement it was mentioned that the services are for three months subsequently will be made on regular basis and hence on completion of the stipulated period they were entitled for regularization in service in consonance with the requirement of the advertisement.

4. The contention of the Party I drivers is that they were entitled to be regularized on completion of continuous service of 240 days. The Party I drivers have stated that the drivers who were regularized in the first batch are drawing higher salary as compared to drivers who were regularized subsequently. The Party I drivers have claimed that they have sustained monetary loss on account of the delay in regularizing of their services. The Party I workmen have stated that they are entitled for regularization of services on completion of 240 days of continuous service with fixation of salary in the pay scale of Rs. 3050-75-3950-80.

5. The Party II has stated that the appointment of the drivers was necessitated on account of temporary increase in the workload. The Party II has stated that the services of these drivers were regularized depending upon availability of posts and on the basis of satisfactory work performance. The Party II has denied that it has indulged in unfair labour practice or victimization. The Party II has denied that the services of these drivers had to be regularized on completion of 240 days of continuous service.

6. Based on the aforesaid pleading following issues were framed.

1. Whether the Party I proves that the workmen named in the reference were entitled for regularization of their services of completion of continuous service of 240 days?
2. What relief?
3. What order?

7. Learned advocate, Shri Kundaikar has argued that pursuant to the advertisement issued by the Party II, several drivers were appointed on permanent basis. He has argued that some of these drivers were regularized from August, 2001 to June, 2002 while the drivers involved in this reference were regularized subsequently in different batches. He has argued that regularization of services in batches of the similarly placed workmen has resulted in disparity in the wages drawn by the drivers. He has argued that the Party I drivers were entitled for regularization on completion of 240 days. He has argued that the action of the management to keep these drivers as daily wage drivers for such long period amounts to unfair labour practice.

8. Learned Adv., Shri Mane has argued on behalf of the Party II Corporation. He has argued that the drivers were appointed on daily wages due to temporary increase in the workload. He has argued that though these drivers were appointed on daily wages, they were given all benefits which were given to the permanent employees and that their services have been regularized depending upon the availability of posts and satisfactory work performance. He has argued that these drivers are not entitled for regularization on completion of 240 days of service. I have perused the records and considered the arguments advanced by the respective parties and my findings on the issues are as under.

9. *Issue No. 1:* It is not in dispute that in the year 1999 and 2000 the Party II had issued an advertisements in local daily for heavy vehicle drivers on daily wages. It is not in dispute that the advertisement stated that initially the appointment would be on daily wages for three months and thereafter would be made on regular basis subject to satisfactory performance. However there was no such stipulation in the advertisement issued in the year 2000. The Party I/workmen drivers had applied for the posts of drivers and they were selected and were appointed by the Party II on daily wages of Rs. 100/- per day of actual work. The evidence of Avinash Rawal, the president of the Union indicates that all these drivers were appointed vide order dated 31-7-2000. It is thus evident that these drivers were appointed pursuant to the advertisement issued in the year 2000. As stated earlier the said advertisement did not mention that the services of the drivers would be regularized within three months or within any stipulated period. It is also to be noted that the evidence of Shri Avinash Rawal indicates that services of these drivers have already been regularized. Shri Rawal contends that

Party I drivers were entitled for regularization on completion of 240 days of continuous service. He has stated that the Party I drivers were appointed on regular vacancies and that they were recruited on permanent jobs and that to deny regularization and keep them on daily wages perpetually is unjust and arbitrary and amounts to unfair labour practice.

10. It is pertinent to note that though the Party I has stated that these drivers were entitled for regularization on completion of service of 240 days, it has not produced any evidence to show that the Party II had undertaken to regularize the services of these drivers on completion of service of 3 months or 240 days. As stated earlier, that the advertisement at Exb. 20, does not indicate that the Party II had assured the drivers and conductors that their services would be regularized on completion of continuous service of three months or 240 days. There is also no evidence on record to prove that the drivers were appointed on existing vacancies. On the contrary, the material on record indicates that these drivers were appointed on daily wages due to temporary increase of work which were mainly due to the absenteeism of the regular drivers. Since the Party I drivers were temporary workmen they had no right to the post and they were not entitled for regularization of their services merely because they had completed 240 days of continuous services. Even otherwise Section 25F of the Industrial Dispute Act does not stipulate regularization of services on completion of 240 days. In the case of *Gangadhar Pillai v/s Siemens Ltd., 2007 (1) SCC 533,* the apex court has held that *"It is not the law that on completion of 240 days of continuous service in a year, the concerned employee becomes entitled to for regularization of his services and/or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the Industrial Disputes Act, the concept of 240 days was introduced so as to fasten a statutory liabilities upon the employer to pay compensation to be computed in the manner specified in Section 25 F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularized."* Similarly in the case *of Mehboob Deepak v/s Nagar Panchayat Gajrauta and reported in 2008 (1)SCC 575* and the case of *Branch Manager, M. P. State Agro Industries Development Corporation Ltd., and Another v/s S.C. Pandey reported in 2006 (II) SCC 716* and M. P. Housing Board v/s Manoj Shrivastava (2006) 2 SCC 702 the apex court has reiterated that only because the employee has been working for more than 240 days he does not derive any legal right to be regularized in service.

11. Thus the principles laid down in the aforesaid decisions are sufficient to negate the contention of the Party I that these drivers were entitled for regularization on completion of 240 days of continuous service. These drivers have been regularized as and when the vacancies arose. This being the case there is no substance in the contention of the Party I that the Party II had indulged in victimization or unfair labour practice. Hence the issue No. 1 is answered in negative.

12. *Issue No. 2:* Since the drivers named in the reference were not entitled for regularization of their service on completion of 240 days of continuous service they are not entitled for any relief as claimed. Under the circumstances and in view of discussion supra, I pass the following order.

ORDER

1. The demand of Kadamba Kamgar Union for regularization of the services of the workmen named in the reference on completion of 240 days of continuous service is not legal and justified. The drivers named in the reference are not entitled for any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(A. Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

Notification

No. 28/1/2009-LAB/495

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 30-03-2009 in reference No. IT/55/01 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 7th May, 2009.

IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT-I
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/55/01

Workmen,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
Shetye Sankul, Tisk,
Ponda-Goa. … Workmen/Party I

V/s

M/s. Seeds Marketing,
Portel Bhat, Batim,
Goa Velha. … Employer/Party II

Workmen/Party I - Adv. Suhas Naik.

Employer/Party II - Adv. M. S. Bandodker.

AWARD

(Passed on this 30th day of March, 2009)

1. By order dated 1-11-01, the Government of Goa, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute for adjudication of this Tribunal.

"(1) Whether the management of M/s. Seeds Marketing, Batim, Goa Velha in terminating the services of 17 workmen whose names are mentionedbelow with effect from 7-8-00 is legal and justified?

1. Deepak Phadte
2. Bazil Pereira
3. Minguel Fernandes
4. Naunath Adpaikar
5. Rupesh Naik
6. Chandrakant Gauns
7. Rohidas Gauns
8. Rznikant Adpaikar
9. Rohidas Naik
10. Sandesh Kartikar
11. Nelson D'Cunha
12. Jimmy Mendes
13. Paresh Haldankar
14. Santosh Gauns
15. Vinod
16. Mahesh Gauns
17. Narayan Gauns

(2) If not, to what relief the workmen are entitled?"

2. Notices were issued to both parties. The Party I has filed claim statement at Exb. 4 and the Party II has filed written statement at Exb. 5. The rejoinder of the Party I is at Exb. 6.

2. The Party I workmen were the employees of the Party II. The services of these workmen were terminated w.e.f. 7-8-2000. The Party I have claimed that the Party II has not followed the proper procedure and is in violation of clause 15 of the settlement dated 17-5-2000. The Party II workmen have stated after termination of their services, the Party II has recruited new workers. The Party I workmen have stated that their termination is illegal and that they are entitled for re-instatement with all consequential benefits.

3. The Party II has claimed that the establishment is closed w.e.f. 10-8-2000 and the partnership is dissolved and the reference needs to be rejected on this ground alone. The Party II has stated that it had sustained heavy losses and due to financial constraints it had closed the establishment w.e.f. 10-8-2000 after complying with all the required formalities and offering/paying all the legal dues and hence the Party II claimed that the Party I is not entitled for any relief.

5. Based on the aforesaid pleadings, the following issues were framed.

1. Whether the Party I/workmen prove that the employer/Party II terminated their services w.e.f. 7-8-2000?
2. Whether the Party I/workmen prove that termination of their service by the employer/ /Party II w.e.f. 7-8-2000 is illegal and unjustified?
3. Whether the employer/Party II proves that its establishment is permanently closed from 10-8-2000?
4. Whether the employer/Party II proves that its partnership is dissolved subsequent to the closure of the establishment & hence the reference is not maintainable?
5. Whether the Party I/workmen are entitled to any relief?
6. What Award?

The Party I/workmen at Sr. Nos. 1-16 appeared before this Tribunal on 16-6-08 & filed terms at Exb. 13 and stated that they have settled the dispute a per the terms at Exb. 13 & have prayed for drawing consent award. The workmen at Sr. No

17 also appeared before this Tribunal on 11-8-08 and stated that the terms at Exb. 13 are agreeable to him and has also signed the said terms & prayed for drawing consent award. The terms at Exb. 13 are agreeable to all the parties and are in the interest of the workmen. Hence, I pass the following consent award as per the terms.

AWARD

1. It is agreed that parties that the Management of M/s. Seeds Marketing, Portel Bhat, Batim, Goa Velha, Ilhas, Goa shall pay to the respective person as mentioned in the enclosed Annexure A the amount specified against their names in the said Annexure A by way of cheques dated 11-6-2008 drawn on Margao Urban Bank, Goa Velha Branch which shall include all the claims of all the workmen concerned in the reference arising out of the present dispute/reference No. IT/55/01 and his employment/termination, including any claims of earned wages, bonus, gratuity, notice pay, closure compensation, leave encashment, ex-gratia, compensation, etc. or any other claim which can be computed in terms of money.

2. It is agreed that the workmen/Party I shall accept the said amount as mentioned in the Annexure A hereinabove in full and final settlement of all the claims arising out of present reference and arising out of their employment and/ /or termination arising out of closure of the establishment to all the workmen concerned in the aforesaid reference, including any claim of earned wages, bonus, gratuity, notice pay, leave encashment, ex-gratia, closure compensation, etc or any other claim which can be computed in terms of money, in complete satisfaction of all the claims including the claim made in the present Reference No. IT/55/01 and further confirm that they shall have no claim of whatsoever nature against the firm and or its Partners including any claim of re-instatement and/or re-employment.

12. Inform the Government accordingly.

Sd/-
(A. Prabhudessai),
Presiding Officer,
InIndustrial Tribunal-cum-
-Labour Court.

ANNEXURE A

Sr. No.	Name of the Workmen	Notice pay	Closure compensation	Other dues	Gratuity	Total	Signature
1.	Deepak Phadte	3025	2913	2525	2913	11376	
2.	Bazil Pereira	3025	2913	2525	2913	11376	
3.	Minguel Fernandes	3225	3144	2725	3144	12238	
4.	Navnath Adpalkar	3025	1457	1263	1457	7202	
5.	Rupesh Naik	3025	2913	2525	2913	11376	
6.	Chandrakant Gauns	2175	1933	1675	1933	7716	
7.	Rohidas Gauns	2075	1817	1575	1817	7284	
8.	Rajnikant Adpalkar	2075	1817	1575	1817	7284	
9.	Rohidas Naik	2075	1817	1575	1817	7284	
10.	Sandesh Kurtikar	2075	1817	1575	1817	7284	
11.	Nelson D'Cunha	1850	1529	1325	1529	6233	
12.	Jimmy Mendes	1850	1529	1325	1529	6233	
13.	Paresh Hadlankar	2025	1817	1575	1817	7234	
14.	Santosh Gauns	2175	1933	1675	1933	7716	
15.	Vinod Kundalkar	1850	1529	1325	1529	6233	
16.	Mahesh Gauns	2075	1817	1575	1817	7284	
17.	Narayan Gauns	3225	3144	2725	3144	12238	
Total		40850	35839	31063	35839	143591	

Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 26-03-2009 in reference No. IT/64/98 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 18th June, 2009.

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IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/64/98

Shri Kalidas Y. Naik,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
Ponda-Goa. ... Workman/Party I

V/s

M/s. Advait Electrical & Engineers,
Shop No. I, Sun Flower Appartment,
Near State Bank of India,
Ponda-Goa. ... Employer/Party II

Workman/Party I – Shri P. Gaonkar.

Employer/Party II – Adv., Shri. G. B. Kamat.

AWARD

(Passed on this 26th day of March, 2009)

1. By order dated 15-7-93, the Government of Goa has referred the following dispute for adjudication by this Tribunal.

"1. Whether the action of the management of M/s. Advait Electricals, Engineers and Contractor, Ponda-Goa in terminating the services of their workman, Shri Kalidas Y. Naik, Electrician, with effect from 15-2-1997 is legal and justified.

2. If not, to what relief the workman is entitled?"

2. Notices were issued to both the parties. The Party I filed his claim statement at Exb. 3. The Party II has filed its written statement at Exb. 5 and the rejoinder of the Party I is at Exb. 6.

3. The Party I was employed with the Party II as an electrician w.e.f. 1-9-91. The Party I has stated that on 15-2-97 the Party II forced him to write his resignation letter. The Party I has stated that he was in continuous service from 1-1-91 until 15-2-97 and that his last drawn salary was Rs. 2,000/- per month. The Party I has stated that he was not paid any dues at the time of his termination. The Party I has stated that his termination is illegal and unjustified and has therefore sought re-instatement, with continuity in service and back wages.

4. The Party II has stated that the Party I was in service until 20-11-96 and thereafter he remained absent until 27-11-96. On 28-11-96 he reported to the office and disclosed his intention of leaving the service. The Party II has stated that thereafter the Party I did not report for duties and on 15-2-97 sent a resignation letter by Regd. Post. The same was accepted and his dues were remitted by cheque under covering letter dated 14-3-97, which was sent by Regd. Post, however, the Party I refused to accept the same. The Party II has denied having forced the Party I to sign the resignation letter or having terminated the services of the Party I. The Party II therefore claimed that the Party I is not entitled for any relief.

5. Based on the aforesaid pleadings, the following issues were framed:

1. Whether the workman/Party I proves that, the employer/Party II forced him to resign from service, which amounted to illegal termination of his service?
2. If so, whether the workman/Party I proves that termination of his service by the employer/Party II w.e.f. 15-2-97 is illegal and unjustified?
3. Whether the workman/Party I is entitled to any relief?
4. What Award?

6. Both parties have adduced oral as well as documentary evidence. Shri P. Gaonkar has argued on behalf of the Party I. He has argued that the so-called resignation letter at Exb. W-2 itself indicates that the resignation was not voluntary but was tendered at the request of the Party II. He has argued that the resignation obtained under coercion, force or tendered because of directions of the employer cannot be considered as a voluntary resignation. Shri P. Gaonkar has further argued that if at all the Party I was accepting private work, the

proper course would have been to conduct an inquiry and then take appropriate action against him. Shri P. Gaonkar has argued that the act of the Party II in terminating services of the Party I is illegal and that the Party I is entitled for reinstatement with consequential benefits. He has relied upon the judgments represented in 1984 LAB IC 100, 1979 LAB IC 234, 2001 LLR 689.

7. Learned Adv., Shri Kamat has argued on behalf of the Party II. He has argued that when the workman takes a plea that the resignation was obtained by force, the burden is on him to prove such plea. He has relied upon the judgment in the case of M/s. Delta Engineering Co. Pvt. Ltd. Meerut v/s Presiding Officer, Industrial Tribunal, Meerut 1997(77) FLR 52. Learned Adv., Shri Kamat has argued that the Party I has not discharged this burden. He has argued that the Party I has stated that he had received the copy of the letter and therefore he was aware of the contents of the letter. Despite which the Party I did not lodge any complaint against the Party II for forcing or coercing him to sign the resignation letter nor did he write to the Party II that he was withdrawing the said letter. Learned Adv., Shri Kamat has further argued that the Party I has also admitted that the dispute raised by him before the Assistant Labour Commissioner was only in respect of non payment of gratuity and not regarding termination of his service. Learned Adv., Shri Kamat has further stated that the Party I has also not examined Mohandas Gaude, through whom the Party II had allegedly sent a message to the Party I to come to the office on 15-2-97. He has argued that the Party I has failed to prove that he was forced to resign as against this the evidence of Navin Katkar proves that he had received the resignation letter by Regd. Post and that he had accepted the resignation and remitted the dues to the Party I.

8. I have perused the records and considered the arguments advanced by the respective advocates and my findings on the aforesaid issues are as under:

9. *Issue Nos. 1 & 2:* Both these issues are interlinked and are therefore taken up together for discussion. It is not in dispute that the Party I was in employment of the Party II as an electrician w.e.f. 1-1-91. The Party I had admittedly signed letter of resignation dated 15-2-97 (Exb. E-1). The Party I has stated that the Party II had forced him to sign the said letter. In the case of Messers Delta Engineering Co. Pvt. Ltd., Meerut v/s The Presiding, Officer Tribunal, Meerut 1997(77) FLR 520, the Allahabad High Court has held "the Primary burden of establishing the fact that thumb impression/signature of the employees were obtained by petitioner on blank papers and such papers were subsequently used as resignation letter to the disadvantage of the employees and further that the consent for resignation was taken on false promise and inducement which was not intended to be fulfilled will always remain upon the employees at whose instance the reference was made. It is only after the evidence in support of such plea is adduced that the petitioner is called upon to prove that the employees had voluntarily tendered their resignation"

10. In the case of Buyer Cropscience Ltd. v/s Sampada S. Shetye 2007 (1) BOM C.R 493, the Bombay High Court has also reiterated that the person who is alleging force and duress is first required to plead such a case with all details and thereafter the same is require dot be proved with material evidence.

11. In the instant case, the Party I Kalidas Naik has deposed on 28-1-96 when he had reported for work as usual, the employer Shri Navin Katkar, called him to and told him to leave the job and since then he was not allowed to work. The Party I has deposed that Shri Navin Katkar again called him to the office on 15-2-97 and asked him to sign a blank paper. Thereafter something was typed on the said paper and a copy of the same was given to him. The said typed letter (Exb. E-1) was termed as resignation letter. He has deposed that on receipt of the copy of the letter (Exb. W-1) he contacted the Union and the Union filed a complaint before the Assistant Labour Commissioner, Ponda. He has produced the copy of the complaint at Exb. W-3. In his cross examination he has stated that on 28-11-96 when he had reported for duties, Shri Navin Katkar had called him and questioned him as to why he had not reported for duties from 20-11-96 to 27-11-96. He has further stated that he had not reported for duties after 28-11-96 as he was asked by the Party II not to report for work. He has further stated that on 14-2-97, the Party II had sent a message to him through his neighbor Mohandas Gaude, asking him to come to the office on 15-2-97. He has deposed that when he approached Shri Navin Katkar, he told him to sign some blank papers and threatened to get him arrested and send him to the police custody in case he failed to sign the said blank papers. The Party I has admitted that he had not lodged any complaint against Navin Katkar for obtaining his signature on a blank paper under threat. He has also admitted that he had not written any letter to Navin Katkar informing him

that he had signed the letter dated 15-2-97 (Exb. E-1) under threat and that he had no intention of resigning.

12. It is pertinent to note that in the claim statement the Party I had made a vague statement that the Party II had forced him to resign on 15-2-97. He had not stated that his signature was obtained on a blank paper and that the contents of the letter (Exb. W-1) was typed subsequently. He had also not averred that Navin Katkar had threatened to get him arrested. The Party I has not given any details of the acts of coercion or the threats given by Navin Katkar. He had also not stated that Navin Katkar had called him on 28-11-96 and had asked him to leave the job. In fact the Party II had averred in para 2 of the written statement that the Party I had remained absent from duty from 20-11-96 till 27-11-96 and that he had reported for duty on 28-11-96 and informed that he wanted to leave the job and thereafter on 15-2-99 he had sent his resignation letter by Regd. Post. In the rejoinder at Exb. 6 the Party I had denied having remained absent from 21-11-96 to 27-11-96 and had stated that he had worked until 15-02-97. Whereas in his evidence before the Tribunal he has admitted having remained absent from duty from 21-11-96 to 27-11-96. He had also admitted that he had reported for duty on 28-11-96 and had remained absent after 28-11-96. The evidence adduced before the Tribunal is totally inconsistent with the pleadings and this casts a doubt on credibility of the Party I.

13. It is also to be noted that though the Party I has stated that the Party II had sent a message through his neighbor Mohandas Gaude, asking him to come to the office on 15-2-97, the Party I had not averred this fact and had also not examined said Mohandas to prove the said fact. The Party I has also not assigned any reasons for not examining the said witness. This being the case there is nothing on record to corroborate the statement of the Party I that on 28-11-96 Navin Katkar had told him to resign or that Navin Katkar had called him to the office on 15-2-97. The fact that the letter at Exb. P1 was sent by Regd. Post also falsifies the contention of the Party I that he had signed the said resignation letter in the office of the Party II.

14. Though the Party I has deposed that Navin Katkar had obtained his signature on a blank paper under threat of arrest, he had not averred these facts either in the claim statement or the rejoinder. Hence, the said evidence cannot be looked into. It is also pertinent to note that the Party I has stated that the Party II had given to him a copy of the resignation letter and he has produced the said copy at Exb. W-2. Interestingly the Party I had also signed the copy of the resignation letter at Exb. W-2. If at all the signature of the Party I was obtained on a blank paper, in which the contents of resignation were typed subsequently, the Party I would not have had a signed copy of the resignation letter with him. Be that as it may, the fact that the Party I had a copy of the resignation letter (Exb. W-1) is a clear indication of the fact that he was aware of the contents of the resignation letter at (E-1/W-1), despite which the Party I had neither lodged any complain before any authority not written any letter to the Party II complaining that his resignation was obtained under threat, coercion or force. This fact also belies the story of forcible resignation.

15. It may be mentioned here that in the complaint/letter at Exb. W-3, which was made almost a month later, the Union, had not challenged the termination of the Party I on the ground that the resignation was obtained forcibly but had claimed that the termination was illegal for want of inquiry. The failure report at Exb. W-4, submitted by the Conciliation Officer also indicates that even in the course of the conciliation proceedings the Party I had not challenged the factum of resignation but had challenged the legality of his termination (cessation of employment) on the ground of non-payment of dues. The dispute, which was raised before the Assistant. Labour Commissioner/Conciliation Officer was entirely different from the dispute sought to be agitated and proved before this Tribunal. If at all the Party II had obtained the resignation of the Party I under threat or coercion the Party I as any other prudent person, would have immediately protested at the first available opportunity. The fact that no such protest was made or dispute was raised before the Conciliation Officer also falsifies the contention of the Party I that he was forced to resign or that his resignation was obtained under threat, duress and coercion and this further indicates that the defence set up in the claim statement is purely an afterthought.

16. The resignation letter at Exb. W-1/E-1 refers to talks held in the shop of the Party II on 2-11-96 and request made by the Party II to the Party I to resign. Shri P. Gaonkar has contended that the said resignation letter itself indicates that the Party I had tendered resignation at the request of the Party II. Relying upon the judgment of the A. P. High Court, in the case of Vice Chancellor Shri Padmavati Mahila Viswavidyalayam, Tirupati v/s Professor V. N. Das (2001 LLR 1047), he contends that the termination on the basis of resignation

tendered by the Party I under direction of the Party II or resignation obtained by force is illegal.

17. In the case of Vice Chancellor (supra), the respondent who was the registrar of the University had committed certain irregularities and instead of taking penal action against her, the Vice Chancellor who was not an appointing authority had asked the registrar to submit her resignation. The Hon'ble High Court held that no authority, far less an authority that is not an appointing authority could ask the respondent registrar to resign. It was held that there was no doubt that the respondent was directed to resign and such resignation having been obtained on coercion or otherwise and/on the basis of a direction issued by an authority had no say in the matter is illegal.

18. In the present case, there is no evidence to prove that the Party II had directed or pressurized the party I to tender his resignation. It is also to be noted that though the resignation letter (Exb. W-1/ E-1) refers to discussion/talks held on 28-11-96 & the request made by the Party II to the Party I to resign, the Party I has not given any details of such talks or request either in the claim statement or the rejoinder. Furthermore, it is not even the case of the Party I that he had tendered resignation as per the talks held on 28-11-96 or the request made by the Party II. On the contrary, the case of the Party I is that the contents of the said resignation letter were typed by the Party II after obtaining his signature on a blank paper, under threat. The arguments that are sought to be advanced are neither based on the pleadings nor supported by the evidence.

19. The evidence of Navin Katkar indicates that the Party I had not reported for duty from 21-1-96 to 27-11-96. He has deposed that on 28-11-96, when the Party I had reported for duty, he had asked the Party I why he had remained absent and whether he was undertaking private work. He has deposed that the Party I did not reply anything and left the place and thereafter did not report for work. Navin Katkar has deposed that on 17-2-97 he received a letter from the Party I that he was resigning from service. Though this witness was cross-examined at length, nothing was elucidated from his evidence to suggest that there was any other discussion between him and the Party I other than the one stated by him. Hence, the only inference that can be drawn is that the 'talks' referred to in the resignation letter relate to questioning by the Party II to the Party I about his absence and undertaking private work. These talks cannot be considered as coercion or threat to resign.

20. It is also to be noted that the letter of resignation was sent on 15-2-97, which was more than one and half month after the said talks. The Party I had admittedly not reported for work after 28-11-96 and during this intervening period i.e. between 28-11-96 to 15-2-97, the Party I had sufficient time to ponder over the request, if any, made by the Party II and/or to resist the pressure tactics adopted by the Party II. Despite the fact that the Party I had not complained to any authority but had submitted his resignation after such a time gap, indicates that the decision to resign was taken by the Party I independently, voluntarily and after deliberation sans any pressure, direction, coercion or threat by the Party II.

21. In view of these distinguishing facts, the previously mentioned decision so also the other authorities relied upon by Shri Gaonkar are not applicable to the facts of the present case.

22. The Party I has failed to prove that his resignation was procured by exerting and/or coercion, force. Since the resignation was voluntary, it does not amount to illegal termination of service. Hence, issues No. 1 & 2 are answered in the negative.

23. *Issue No. 3:* The Party I has failed to prove that the Party II had terminated his services illegally and as such the Party I is not entitled for any relief. Issue No. 3 is answered accordingly.

24. Under the circumstances, and in view of discussion supra, I pass the following order:

ORDER

1. It is hereby held that the Management had not terminated the services of the Party I illegally or unjustifiably and that the cessation of employment of the Party I was because of voluntary resignation by the Party I/workman, Kalidas Naik.

2. The Party I/workman is not entitled for any relief.

Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 26-03-2009 in reference No. IT/4/97 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 18th June, 2009.

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IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/4/97

Workmen,
Rep. by
The General Secretary,
K.T.C. Workers Union,
54 Defence Colony,
Alto-Porvorim-Goa. … Workmen/Party I

V/s

M/s. Kadamba Transport Corp. Ltd.,
P.O. 321, Bus Terminus,
Panaji-Goa. … Employer/Party II

Workmen/Party I – Adv., Shri A. Kundaikar.

Employer/Party II – Adv., Shri A. Palekar.

AWARD

(Passed on this 26th day of March, 2009)

1. In exercise of the powers conferred by sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 16th January, 1997, bearing No. IRM/CON/SG/(68)/96/305 referred the following dispute for adjudication by this Tribunal.

"1. Whether the action of M/s. Kadamba Transport Corporation Limited, Panaji in stopping the two annual increments for the years 1994 and 1995 of Shri Madhukar J. K. Gaonkar, Conductor, vide order No. KTC/ /TRF/DEF/1/94-95/(X)/457 dated 23-8-1994 is legal and justified?

2. If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/4/97 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short, "Workman") filed their statement of claim at Exb. 5. The case of the workman in brief is that he is working as a Conductor with the Employer/Party II (for short, "Employer") since 1987. On 18-5-93, the line checking staff of the employer intercepted the bus GDX 66, which was plying on route Margao-Malkerne and on which bus the workman was the conductor. The line checking staff issued default notice dated 18-5-93 to the workman for the irregularities namely (1) Finding throwing the amount of Rs. 50/- under driver's seat in the driver's cabin; (2) Finding total 8 passengers driving without ticket though fare was collected from them and (3) Finding shortages of Rs. 2.30 in the cash bag of the workman. The workman replied to the said default notice by reply dated 21-5-93 denying allegations made against him and stating that he had been falsely implicated in the matter. On 16-6-93 the workman was served with the charge sheet stating that he had committed misconduct under clause 28(vi), (xv), (xxxv) and (lxi) of the Certified Standing Orders of the employer. The workman replied to the said charge sheet by his reply dated 3-7-93 denying the charges levelled against him. An enquiry was conducted into the said charge sheet. The workman's contention is that the domestic enquiry conducted against him is not fair and no reasonable opportunity was given to him to defend himself in the enquiry. The workman has contends that the enquiry was conducted in violation of the principles of the natural justice. The Inquiry Officer on completing the enquiry submitted his report to the management holding that the charges levelled against the workman are proved. The workman's contention is that the findings of the Inquiry Officer are not in accordance with the evidence recorded in the enquiry. On 23-8-94, the employer issued an order to the workman stopping his 2 annual increments for the years 1994-95. Being aggrieved by the said order of the employer the workman raised industrial dispute and the conciliation proceedings held by the Conciliation Officer ended in failure and subsequently the Government made the reference of the present dispute to this Tribunal for adjudication. The workman's contention is that the action of the employer in stopping the two annual increments for the years 1994 and 1995 vide order dated 23-8-94 is not legal and justified. The workman

therefore claimed that the said order of the employer is liable to be set aside and the employer is liable to be directed to release the increments which are withheld by the employer.

3. The employer filed written statement at Exb. 6. The employer stated that the workman was appointed as substitute conductor on daily wages from 16-2-87 and his appointment was extended from time to time. The employer stated that the workman had committed number of misconducts for which he was warned/fined. The employer stated that on 18-5-93 while the workman was on Margao-Malkarne route on Vehicle No. GDX 66, he was checked by the line checking staff at Malkerne and he was issued a default notice and was subsequently charge sheeted vide charge sheet dated 16-6-93 for misconducts mentioned in the said charge sheet. The employer stated that since the charges were of serious nature the disciplinary authority decided to conduct departmental enquiry against the workman and accordingly enquiry was conducted in which the workman participated along with his representative. The employer stated that on receipt of the enquiry report from the Inquiry Officer the disciplinary authority went into the enquiry proceedings and past records of the workman. The employer stated that a show cause notice dated 5-2-94 was issued to the workman and on considering the reply of the workman, as a gesture of sympathy, a lenient view was taken and the employer awarded lesser punishment of stoppage of 2 annual increments of the years 1994 and 1995 vide order dated 23-8-94. The employer denied that the enquiry conducted against the workman is not fair or that proper opportunity was not given to the workman to defend himself in the enquiry or that the enquiry was conducted in total violation of the principles of natural justice. The employer denied that the findings of the Inquiry Officer are perverse and stated that the Inquiry Officer has given his findings by applying his mind to the evidence brought on record. The employer stated that the punishment of stopping two annual increments was imposed on the workman after taking into consideration the letter dated 19-8-94 of the workman to the General Manager of the employer wherein the workman admitted his misconducts including defaults and asked for pardon for his bad deeds. The employer stated that the punishment imposed on the workman is legal and justified and the workman is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 7.

4. Based on the aforesaid pleadings, the following issues were framed.

1. Whether the Party I/workman proves that the domestic enquiry held against him is not fair and proper?
2. Whether the charges of misconduct levelled against the Party I/workman are proved to the satisfaction of the Tribunal by acceptable evidence?
3. Whether the Party I/workman prove that the action of the Party II/employer in withholding his two annual increments for the years 1994 and 1995 vide order dated 23-8-94 is illegal and unjustified?
4. Whether the Party I/workman is entitled to any relief?
5. What Award?

5. Issues No. 1 & 2 were treated as Preliminary issues. Parties had adduced evidence on these issues. Findings on these issues were given by order dated 14-3-2002, wherein the inquiry was held to be just & fair & the charges were held to be proved. The workman was called upon to adduce evidence on issue No. 3. The workman has not adduced any evidence on issue No. 3. The employer has examined Mr. Anant Shirvoikar. Learned Adv., Shri Kundaikar has filed written arguments on behalf of the Party I/workman. Learned Adv., Shri A. Palekar has filed written arguments on behalf of the Party II/employer. I have perused the records and considered the arguments advanced by the respective parties and my findings on issue No. 3 are as under:

6. *Issue No. 3:* The Inquiry officer has held the Party I/workman guilty of the following misconduct: (1) throwing 50 Rupee note under the drivers seat, which amount was generated by non issue of tickets & collecting fare from the passengers (2) Not issuing tickets to five passengers traveling from Rivona to Malkarne and collecting Rs. 1.50 each from the said three passengers towards bus fare and (3) shortage of cash of Rs. 2.30. The said acts constitute misconduct under clause 28(vi), (xv), (xxv) of the certified standing orders. On considering these finding the Party II issued order dated 23-8-94, whereby two annual increments of the Party I for the years 1994 & 1995 have been stopped. Learned Adv., Shri Kundaiker has argued that the said order will adversely affect the terminal benefits due to the Party I/workman at the time of his retirement. Relying upon the judgment of the Apex Court in the case reported in AIR 1983 SC

454, he has argued that the penalty imposed must be commensurate with the gravity of the misconduct. He has argued that the penalty imposed on the Party I is grossly disproportionate to the charges levelled.

7. Learned Adv., Shri Paleker has argued that considering the gravity of the misconduct, the Party II would have been justified in dismissing the services of the Party II but the Party II has taken a lenient view and has withheld only two increments of the Party I. Learned Adv., Shri Paleker has further argued that the past conduct of the Party/workman I is far from being satisfactory and the punishment imposed cannot be considered as grossly disproportionate.

8. I have perused the records and considered the arguments advanced by respective advocates. At the outset, it may be mentioned that in the case of *Bhagat Ram v/s State of H. P. reported in AIR 1983 SC 154.* Wherein the apex court has held that, *"the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."*

9. There is no dispute that Section 11(A) empowers the Tribunal to substitute or mould the punishment imposed on the employee. However, it is also well settled that the scope of such interference is limited. In the case of *V. Ramana v/s A.P.S.R.T.C. reported in 2005 DGLS 399,* the apex court after considering several decisions on the issue has summed up in paras 11 and 12, the scope of interference by the adjudicating authority, which reads as under:

"The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision--making process and not the decision.

To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

11. These principles have to be borne in mind while deciding whether the penalty imposed on the Party I need to be interfered with, substituted, moulded or reconsidered.

12. In the instant case, the Party II/employer has imposed-penalty of withholding two annual increments of the Party I/workman. The onus was on the Party I to prove that the said penalty is shockingly disproportionate. The Party I has not adduced any evidence to prove that the said penalty is shockingly disproportionate or that there are any mitigating circumstances which warrant interference with the penalty imposed by the Party II/ /employer. It is also to be noted that the charge of misappropriation of money of the corporation, is a serious and grave charge. In the case of *V. Ramana v/s A.P.S.R.T.C (supra),* the Apex Court has held that *"It is the responsibility of the conductors to collect correct fare charges from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if they do not collect any fare or the correct amount of fare. A conductor holds a post of trust. A person guilty of breach of trust should be imposed punishment of removal from service."*

13. Similarly, in the case of *Dattatraya Mahadev Deshmukh v/s Maharashtra State Road Transport Corp. & anr. 2004 (3) Bom CR 343,* the Bombay H. C. has held that *"...the conductor of a public Transport Corporation is entrusted with a vital function relating to the issuance of tickets and the collection of fares. He is obliged to comply with the administrative direction, which are issued by the Corporation to him scrupulously. A breach of the direction issued by the employer is liable to lead to a loss of the revenue which is legitimately due and owning to the Corporation. In such cases, direct evidence of reissuance of tickets may not necessarily be forthcoming in all cases. The labour Court cannot however, shut its eyes to reality and condone the conduct of a conductor...who has been found wanting in the due discharge of his official duties"*

14. In the instant case, the Party I/workman has committed a serious misconduct and though such misconduct called for major penalty, the Party II/ /employer has taken a very lenient view and imposed only a penalty of stopping two annual

increments. Under no circumstances can this penalty be considered as illegal, unjustified and shockingly disproportionate as to warrant interference. Hence issue No. 3 is answered in the negative.

15. *Issue No. 4:* The penalty imposed on the Party I/workman, by order dated 23-8-94, stopping two annual increments for the years 1994 & 1995 is held to be legal and justified. Hence the Party I is not entitled for any relief. Issue No. 4 is answered accordingly.

16. Under the circumstances, and in view of discussion supra, I pass the following order:

ORDER

1. It is held that the action of M/s. Kadamba Transport Corporation Limited, Panaji in stopping the two annual increments for the years 1994 and 1995 of Shri Madhukar J. K. Gaonkar, conductor, vide order No. KTC/TRF/DEF/1/94-95/(x)/457 dated 23-8-1994 is legal and justified.

2. The Party I is not entitled for any relief.

Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 16-03-2009 in reference No. IT/70/2004 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 19th June, 2009.

IN THE INDUSTRIAL TRIBUNAL
AND LABOUR COURT
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. IT/70/2004

Ms. Maria Sylvia Alfonso,
H. No. 172, Kirbhat,
Carmona-Goa. ... Workman/Party I

V/s

M/s. Royal Goan Beach Resort Pvt. Ltd.,
M/s. Haathi Mahal Resort Hotel,
Mobor,
Cavelossim-Goa. ... Employer/Party II

Workman/Party I represented by Shri B. B. Naik.

Employer/Party II represented by Adv. M. S. Bandodkar.

AWARD

(Passed on this 16th day of March, 2009)

By order dated 06-12-2004, the Government of Goa, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the action of the management of M/s. Royal Goan Beach Resorts Private Limited, Haathi Mahal Resort Hotel, Cavelossim, Salcete-Goa in terminating the services of Ms. Maria Sylvia Alfonso, Desk Attendant, with effect from 17-9-2003 is legal and justified?

(2) If not, what relief the workperson is entitled?"

2. Notices were issued to both parties. The Party I filed her claim statement at Exb. 3. The Party II filed its written statement at Exb. 4. The rejoinder of the Party I is at Exb. 5.

3. The Party I was in service of the Party II as a Desk Attendant from 2-4-2001 till the date of her termination i.e. till 17-9-2003. The Party I has stated that she was employed by the Party II to carry out permanent nature of work. The Party I further stated that in order to deprive her permanency and the facilities of permanent workmen, the Party II engaged in unfair labour practice by giving artificial breaks and by forcing her to sign a contractual appointment. The Party I stated that she was assured by the Party II that her services would be regularized. However, instead of regularizing her services, the Party II terminated her services w.e.f. 17-9-2003. The Party I has stated that she had rendered continuous services of 240 days in the twelve months preceding her termination. The Party I has stated that the Party II has violated Section 25-F of the Industrial Disputes Act, 1947. The Party I has stated that Party II had engaged

more than 150 workmen despite which Party II did not seek permission from the appropriate Government and has thereby violated provisions of Chapter V-B of the Industrial Disputes Act, 1947. The Party I, therefore, claimed that her termination is illegal and unjustified and she has sought re-instatement in service with full back wages with continuity in service.

4. The Party II has stated that the appointment of Party II was for a fixed term period specified in the contractual agreement which was accepted by the Party I. The Party II has denied that the Party I was appointed on a regular post or that she was assured that she would be regularized. The Party II further stated that the termination of the Party I was on account of non-renewal of the contract of appointment and as such, the provisions of Sec. 25-F are not applicable. The Party II has further stated that the Party I is gainfully employed and that she is not entitled for any reliefs.

5. Based on the aforesaid pleadings, following issues were framed at Exb. 6:

ISSUES

1. Whether the workman/Party I proves that she was employed with the Employer/ /Party II as a Desk Attendant on the regular post continuously from 2-4-2001 till the date of his termination?
2. Whether the workman/Party I proves that the termination of his services by the Employer/Party II w.e.f. 17-9-2003 is illegal and unjustified?
3. Whether the Party II proves that the appointment of the workman/Party I with the Employer/Party II was for Fixed Term Period?
4. Whether the Employer/Party II proves that the termination of the services of the workman/Party I is the result of non-renewal of contract of employment?
5. Whether the Employer/Party II proves that the workman/Party I is gainfully employed?
5. Whether the workman/Party I is entitled to any relief?
6. What Award?

6. The matter was posted for evidence. However, during the pendency of the proceedings, the Party I as well as the Representative of the Party II remained present before the Tribunal on 2-4-2009 alongwith their Representative/Advocate and stated that they have settled the matter amicably. The parties have filed the consent terms at Exb. 11. These terms are duly signed by the parties and the said terms are acceptable to them. In my opinion, these terms are in the interest of the workman and hence these terms are taken on record and the Order is passed as under:-

ORDER

1. It is agreed between the parties that the management of M/s. Royal Goan Beach Resort at Haathi Mahal, Mobor, Cavelossim, Salcete-Goa, shall pay in total a sum of Rs. 20,045/- (Rupees Twenty thousand forty five only) to Ms. Maria Sylvia Alfonso by way of 2 installments:

(a) 1st installment of Rs. 10,000/- (Rupees Ten thousand only) bearing cheque No. 12479 dated 1-4-2009 drawn on HDFC Bank, payable at par.

(b) 2nd installment of Rs. 10,045/- (Rupees Ten thousand forty five only) bearing cheque No. 12481 dated 20-4-2009 drawn on HDFC Bank payable at par.

2. The above amount of Rs. 20,045/- (Twenty thousand forty five only) shall include all her claims arising out of the present reference No. IT/70/2004 and her employment, including any claims of earned wages, bonus, gratuity, leave encashment, retrenchment compensation, ex-gratia etc., or any other claim which can be computed in terms of money.

3. It is agreed that Ms. Maria Sylvia Alfonso shall accept the said amount as mentioned in the clause (1) hereinabove in full and final settlement of all her claims arising out of the present reference and arising out of her employment including any claim of earned wages, bonus, gratuity, leave encashment, retrenchment compensation, ex-gratia, etc., or any other claim which can be computed in terms of money, in complete satisfaction of all her claims including the claim made in the present reference No. IT/70/2004 and further confirm that she shall have no claim of whatsoever nature against the company including any claim of re-instatement and /or re-employment.

No order as to costs. Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 16-03-2009 in reference No. IT/54/2004 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 19th June, 2009.

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IN THE INDUSTRIAL TRIBUNAL
AND LABOUR COURT
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. IT/54/2004

Ms. Percy Rodrigues,
H. No. 1744, Vasvaddo, Vadlem,
Benaulim-Goa. … Workman/Party I

V/s

M/s. Royal Goan Beach Resort P. Ltd.,
M/s. Haathi Mahal Resort Hotel,
Mobor,
Cavelossim-Goa. … Employer/Party II

Workman/Party I represented by Shri B. B. Naik.

Employer/Party II represented by Adv. M. S. Bandodkar.

AWARD

(Passed on this 16th day of March, 2009)

By order dated 23-11-2004, the Government of Goa, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the action of the management of M/s. Royal Goan Beach Resort Private Limited, Haathi Mahal Resort Hotel, Cavelossim, Salcete-Goa in terminating the services of Ms. Percy Rodrigues, Resort Attendant, with effect from 2-3-2003 is legal and justified?

(2) If not, what relief the workman is entitled to?"

2. Notices were issued to both parties. The Party I filed her claim statement at Exb. 4. The Party II filed its written statement at Exb. 6. The rejoinder of the Party I is at Exb. 7.

3. The Party I was in service of the Party II as a Resort Attendant from 16-10-2000 till the date of her termination i.e. till 26-11-2003. The Party I has stated that she was employed by the Party II to carry out permanent nature of work. The Party I further stated that in order to deprive her permanency and the facilities of permanent workmen, the Party II engaged in unfair labour practice by giving artificial breaks and by forcing her to sign a contractual appointment. The Party I stated that she was assured by the Party II that her services would be regularized. However, instead of regularizing her services, the Party II terminated her services w.e.f. 26-11-2003. The Party I has stated that she had rendered continuous services of 240 days in the twelve months preceding her termination. The Party I has stated that the Party II has violated Section 25-F of the Industrial Disputes Act, 1947. The Party I has stated that Party II had engaged more than 150 workmen despite which Party II did not seek permission from the appropriate government and has thereby violated provisions of Chapter V-B of the Industrial Disputes Act, 1947. The Party I, therefore, claimed that her termination is illegal and unjustified and she has sought re-instatement in service with full back wages with continuity in service.

4. The Party II has stated that the appointment of Party II was for a fixed term period specified in the contractual agreement which was accepted by the Party I. The Party II has denied that the Party I was appointed on a regular post or that she was assured that she would be regularized. The Party II further stated that the termination of the Party I was on account of non-renewal of the contract of appointment and as such, the provisions of Sec. 25-F are not applicable. The Party II has further stated that the Party I is gainfully employed and that she is not entitled for any reliefs.

5. Based on the aforesaid pleadings, following issues were framed at Exb. 8:

ISSUES

1. Whether the workman/Party I proves that she was employed with the Employer/ /Party II as Resort Attendant on permanent post continuously from 16-10-2000 till the date of his termination?

2. Whether the Workman/Party I proves that the termination of his services by the Employer/Party II w.e.f. 26-11-2003 is illegal and unjustified?

3. Whether the Party II proves that the appointment of the Workman/Party I with the Employer/Party II was for Fixed Term Period?

4. Whether the Employer/Party II proves that the termination of the services of the Workman/Party I is the result of non-renewal of contract of employment?

5. Whether the Employer/Party II proves that the Workman/Party I is gainfully employed?

5. Whether the Workman/Party I is entitled to any relief ?

6. What Award?

6. The matter was posted for evidence. However, during the pendency of the proceedings, the Party I as well as the Representative of the Party II remained present before the Tribunal on 2-4-2009 alongwith their Representative/Advocate and stated that they have settled the matter amicably. The parties have filed the consent terms at Exb. 11. These terms are duly signed by the parties and the said terms are acceptable to them. In my opinion, these terms are in the interest of the workman and hence these terms are taken on record and the Order is passed as under:-

ORDER

1. It is agreed between the parties that the management of M/s. Royal Goan Beach Resort at Haathi Mahal, Mobor, Cavelossim, Salcete-Goa, shall pay in total a sum of Rs. 25,704/- (Rupees Twenty five thousand seven hundred four only) to Ms. Percy Rodrigues by way of 3 installments:

(a) 1st installment of Rs. 10,000/- (Rupees Ten thousand only) bearing cheque No. 12572 dated 1-4-2009 drawn on HDFC Bank, payable at par.

(b) 2nd installment of Rs. 10,000/- (Rupees Ten thousand only) bearing cheque No. 12497 dated 20-4-2009 drawn on HDFC Bank payable at par.

(c) 3rd installment of Rs. 5,704/- (Rupees Five thousand seven hundred four only) bearing cheque No. 012515 dated 18-4-2009 drawn on HDFC Bank, payable at par.

2. The above amount of Rs. 25,704/- (Twenty five thousand seven hundred four only) shall include all her claims arising out of the present reference No. IT/54/2004 and her employment, including any claims of earned wages, bonus, gratuity, leave encashment, retrenchment compensation, ex-gratia etc. or any other claim which can be computed in terms of money.

3. It is agreed that Ms. Percy Rodrigues shall accept the said amount as mentioned in the clause (1) hereinabove in full and final settlement of all her claims arising out of the present reference and arising out of her employment including any claim of earned wages, bonus, gratuity, leave encashment, retrenchment compensation, ex-gratia, etc., or any other claim which can be computed in terms of money, in complete satisfaction of all her claims including the claim made in the present reference No. IT/54/2004 and further confirm that she shall have no claim of whatsoever nature against the company including any claim of re-instatement and/or re-employment.

No order as to costs. Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal &
Labour Court.

Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 26-03-2009 in reference No. IT/43/1996 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 19th June, 2009.

IN THE INDUSTRIAL TRIBUNAL
AND LABOUR COURT
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. IT/43/1996

Workmen,
Rep. by Averina Beach Resort
Employees Union,
Mobor, Cavelossim-Goa. ... Workmen/Party I

V/s

M/s. Averina International Resort Ltd.,
Holiday Inn Resort,
Mobor Beach,
Cavelossim-Goa. ... Employer/Party II

Workmen/Party I represented by Shri Subhash Naik.

Employer/Party II represented by Adv. M. S. Bandodkar.

AWARD

(Passed on this 26th day of March, 2009)

By order dated 31-7-1996, the Government of Goa in exercise of powers conferred under Section 10(1)(d) of the Industrial Disputes Act, 1947, has referred the following dispute for adjudication of this Tribunal.

> "Whether the demand for payment of 20% bonus for the accounting year 1993-94 served on the management of M/s. Averina International Resorts Limited, Holiday Inn Resort, Mobor, Goa, by Averina Beach Resort Employee Union is legal and justified?
>
> If not, to what relief the workmen are entitled?"

2. On receipt of the reference, notices were issued to both parties. The Party I/Workmen filed their claim statement at Exb. 5. The Party II has filed its written statement at Exb. 6.

3. The Party I/Workmen are the employees of the Party II/Resort. The Party II establishment had commenced its business in the year 1991. The Party I has stated that the business of the Party II had doubled in the year 1993-94, despite which the workmen were not paid any bonus for the said accounting year. The union, therefore, submitted a demand for payment of 20% bonus for the said year. The Party II did not respond to the said demand. Hence, it raised the dispute. The Party I has stated that its demand is legal and justified.

4. The Party II denied that it had made huge profits in the accounting year 1993-94. The Party II has further stated that Party I/Workmen are not entitled for bonus at the rate of 20% for the said accounting year. The Party II has stated that the demand of Party I is not legal and is unreasonable.

5. Based on the aforesaid pleadings, the following issues were framed:

ISSUES

1. Whether the Party I proves that its demand for 20% bonus for the accounting year 1993-94 is legal and justified?
2. Whether the Party II proves that the workmen are not entitled to any bonus for the accounting year 1993-94 as per the Payment of Bonus Act?
3. Whether the Party I is entitled to any relief?
4. What Award?

6. Shri Subhash Naik argued on behalf of the Party I/workmen. Learned Adv., Shri Bandodkar has argued on behalf of the Party II. I have perused the records and considered the arguments and my findings on the aforesaid issues are as under:

7. *Issues No. 1 and 2:* Both these issues are inter-related and are, therefore, taken up together. The Party I/Workmen are admittedly the employees of the Party II/Resort which had commenced its business on 20-12-91. The demand for bonus is for the accounting year 1993-94, i.e. for the period within first five years of commencement of the business. It may be mentioned that Section 16 of the Payment of Bonus Act provides that, "where an establishment is newly set up, whether before or after the commencement of the Act, the employee of such establishment shall be entitled to be paid bonus under the Act in accordance with the provision of sub-section (1-A) (1-B) and (1-C).

Sub-section (1-A) of this section provides that "in the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders service, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Act in relation to that year, but without applying the provisions of Sec. 15.

Clause (a)(b) of Explanation II to this section provides that: For the purpose of sub-section (1-A), an employer shall not be deemed to have derived profit in any accounting year unless—

(a) he has made provision for that year's depreciation to which he is entitled under the Income Tax Act or, as the case may be, under the agricultural income-tax law; and

(b) the arrears of such depreciation and losses incurred by him in respect of the establish-

ment for the previous accounting years have been fully set off against his profits.

8. It is thus clear that when the establishment is newly set up, in the first five years, the workmen employed in such establishment are entitled for bonus only in the accounting year in which the employer derives profit. The contention of the workmen is that the Party II had not paid bonus for the accounting year 1993-94, even though the Party II had made huge profits during this year. In this regard, the witness for the Party I/workmen Shri Rafiq Abibaique, the President of the Union has deposed that the Party II has not paid any bonus to its workmen for the accounting year 1993-94. He has deposed that the Party I had made good business and their balance sheet showed that it has made profit of 17 lakhs during the said year. In his cross examination, he has stated that he has not seen the balance sheet for the year 1991-92, 1992-93 and 1993-94. He has stated that in the course of discussion, the Party II had stated that it had made profit of 17 lakhs. This witness has not given any further particulars or details of the information given by the Party II about making profits of 17 lakhs. The Party I has also not produced any documentary evidence to prove that the Party II had made profit of 17 lakhs and as such the statement of the witness Shri Rafiq Abibaique that the Party II had informed him that it made profit of Rs. 17 lakhs is not corroborated by any other evidence. On the contrary, the evidence of Shri Ramnath Kunde, who is working for the Party II as Unit Finance Controller indicates that vide letter dated 23-2-95, which is at Exb. E-1, the Party II had informed the Party I that the total carry forward loss for the accounting year 1993-94 was Rs. 5,16,39,104/-. The witness, Shri Ramnath Kunde has also produced Board of Directors Report, Auditors report alongwith the balance sheet and profit and loss account as on 31-3-96 at Exb. E-2 colly. This witness has deposed that the balance sheets are certified by Chartered Accountant Ganesh & Ganesh. This witness has stated that he was fully involved in the preparation of the balance sheet and profit and loss account. The evidence of this witness viz-a-viz the documents at Exb. E-2 colly indicate that the carry forward loss including the loss for the year 1993-94 was Rs. 15,84,022/-. He has deposed that carry forward loss as per the Payment of Bonus Act, upto the end of the accounting year 1993-94 was Rs. 5,16,39,104/-. He has stated that in the said year the turn over was Rs. 4,70,00,00/-. In the cross examination, he has admitted that there is huge increase in administrative and other expenses in the accounting year ending March, 1994 as compared to the year ending March, 1993. He has explained that the said increase was because of increase of room capacity. He has further stated that depreciation was worked out to straight line method as provided under the Companies Act and as per the profit and loss account. He has further stated that expenses towards advertisement and sales promotion had increased in the year ending March, 1994 as compared to the year ending March, 1993. He has explained that more advertisement were released in the year to attract the customers. He has denied the suggestion that the administrative expenses, advertisements and sales promotion expenses, up-keep and service cost, employees remuneration and welfare expenses, interest amount and depreciation have been inflated in order to deny bonus to the workmen.

It may be mentioned here that in terms of Sec. 23 of the payment of Bonus Act, the balance sheet and the profit and loss account which have been duly audited by the qualified auditors are presumed to be accurate. In the instant case, apart from the bare suggestion that the expenses have been inflated, the Party I has not adduced any tangible evidence to rebut the said presumption and as such the balance sheet and the profit and loss account cannot be said to be inaccurate. The Party I has failed to prove that Party II had made profit for the accounting year 1993-94 and as such in view of Sec. 16 (1-A) of the Act, the workmen are not entitled for any bonus during the said year. Hence, Issue No. 1 is answered in the negative and Issue No. 2 is answered in the affirmative.

9. *Issue No. 3:* Since the Party I has failed to prove that Party II had made profit during the accounting year 1993-94, the Party I/workmen are not entitled for any relief. Issue No. 3 is answered accordingly.

Under the circumstances, and in view of discussion supra, I pass the following order:

ORDER

It is hereby held that the demand for payment of 20% bonus for the accounting year 1993-94, served on the management of M/s. Averina International Resorts Limited, Holiday Inn Resort, Mobor, Goa, by Averina Beach Resort Employees Union is not legal and justified. The workmen are not entitled for any relief.

Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal &
Labour Court.

Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 26-03-2009 in reference No. IT/25/03 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 19th June, 2009.

IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/25/03

Shri Ashok R. Naik,
Kadamba Kamgar Union,
T-1, Sindur Bldg.,
Opp. Passport Office,
Panaji, Goa. ... Workman/Party I

V/s

M/s. Kadamba Transport Corp. Ltd.,
P.O. Box No. 321,
East Wing Bus Terminus,
Panaji-Goa. ... Employer/Party II

Workman/Party I – Adv., Shri A. Kundaikar.

Employer/Party II – Adv., Shri P. M. Nimbalker.

AWARD

(Passed on this 26th day of March, 2009)

1. The Government of Goa by order dated 8-5-2003, bearing No. 28/48/2002-LAB referred the following dispute for adjudication.

"1. Whether the action of M/s. Kadamba Transport Corporation Limited, in withholding one annual increment of Shri Ashok R. Naik, Driver with cumulative effect i.e. for the year 1999, is legal and justified.

2. If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/25/2003 and the registered A/D notices were issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short, "Workman") filed their statement of claim at Exb. 3. The facts of the case as pleaded by the workman are that he was appointed as a Driver with Party II and is presently posted at Margao depot. That on 19-5-1998 he was operating the vehicle mini bus No. GA-01-X-0179 on the route from Margao to Panaji via Zuari Bridge. That while operating the said vehicle, he stopped at Bambolim bus stop and noticed that his family members were waiting for the bus and no sooner the family members of the workman saw him they, without any hesitation, boarded in the bus that the workman was driving. Two more passengers also boarded the vehicle on the pretext that the vehicle had taken passengers. When the said vehicle, arrived at Panaji bus stand, the family members of the workman alighted from the vehicle and the remaining two passengers took the fare and kept it on the dash board of the vehicle. That after this incident the workman proceeded further and one unidentified person lodged the complaint against the workman to seek retribution on the workman. The explanation of the workman was called for by the Party II. The workman filed his explanation. That the Party II did not consider the explanation of the workman satisfactory and issued the workman charge sheet dated 27-5-1998 whereby the workman was charge sheeted under Clause No. 28(xv) (xxxv) of the Certificate of Standing Orders. That as per the charge sheet the workman was charged that while he was on duty on 19-5-1998 on the Kadamba Transport Corporation mini bus No. GA-01-X-0179 operating from Margao to Panaji via Zuari Bridge, he collected seven passengers at Bambolim and collected fare from them. That this act of the workman in collecting seven passengers and taking money amounts to gross misconduct and breach of orders. That the workman filed his reply to the charge sheet. That the departmental inquiry was conducted against the workman and the workman was placed under suspension pending departmental inquiry. That the said suspension was revoked by order dated 27-5-1998. The workman further stated that the inquiry was conducted by Mr. A. B. Prabhu. That the inquiry was not held in a fair and proper manner and it was conducted in violations of the principles of natural justice. The workman also stated that in the inquiry he was not given any representative to defend his case in the inquiry and that he was unable to cross-examine the management witness. That the inquiry was conducted in flagrant violations of the principles of natural justice, and that he was not afforded reasonable opportunity to defend the charges. The workman submitted that there is no acceptable

evidence on record to hold the workman guilty. That the penalty of withholding one annual increment is illegal, unjustified, and bad in law.

3. The employer filed his written statement at Exb. W-5. The employer/Party II (for short 'employer') admitted that the workman was appointed as a driver however, he denied that the service record of the workman was unblemished. The employer stated that since the beginning his performance was not satisfactory and he had committed various misconducts for which he was issued various memos, charge sheets, fines, etc. The employer stated that the workman committed various misconducts for which he was punished in the past. It is the case of the employer that on 19-5-1998 while the workman was on duty on KTCL mini bus No. GA-01-X-0179 he unauthorisedly collected seven passengers at Bambolim and collected fare from them and kept the same with himself. That the above act committed by workman constitute the misconduct as per the Certified Standing Orders of the employer for which the workman was charge sheeted and a proper departmental inquiry was held. That in the inquiry the workman was given full opportunity to defend himself and also to bring the representative of his choice. That the workman did not avail this opportunity. That the workman participated in the inquiry however, did not cross-examine the witness of the management of his own. The employer stated that the workman fully participated in the inquiry and the inquiry was held according to the principles of natural justice and the Enquiry Officer submitted his findings, holding the workman guilty of the charges of misconduct by acceptable evidence on record. The employer denied that the inquiry was conducted in flagrant violations of the principles of natural justice. The employer denied that the inquiry was conducted in haste and in prejudiced manner and that, the actions of the employer in withholding of one annual increment smacks of maladies and of unfair labour practice. The employer denied that the findings given by the Enquiry Officer are perverse. The employer submitted that the punishment of withholding one annual increment with cumulative effect was imposed on the workman, is fair, just and proper in the circumstances of the present case.

4. The workman filed his rejoinder at Exb. 6. Based on the aforesaid pleadings, following issues were framed:

1. Whether the Party I proves that the enquiry conducted against him is not fair and proper?
2. Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence?
3. Whether the Party I proves that the action of the Party II in withholding his one annual increment with cumulative effect for the year 1999 is illegal and unjustified?
4. Whether the Party I is entitled to any relief?
5. What Award?

5. Issues No. 1 & 2 were treated as Preliminary issues. Parties had adduced evidence on these issues. Findings on these issues were given by order dated 19-5-2006, wherein the inquiry was held to be just & fair & the charges were held to be proved. The Party I was called upon to adduce evidence on issue No. 3. Both the parties have not adduced any evidence on issue No. 3. Learned Adv., Shri Nimbalker has filed written arguments on behalf of the Party I. Learned Adv., Shri A Palekar has filed written arguments on behalf of the Party II. I have perused the records and considered the arguments advanced by the respective parties and my findings on issue No. 3 are as under:

6. *Issue No. 3:* The Party I, the driver of the Party II, has been held guilty of collecting seven passengers on KTC mini bus GA-01-X-0179, operating from Margao to Panaji, and collecting fares from these passengers with an intention of misappropriating the revenue of the Corporation and causing loss to the Corporation. This act constitutes misconduct under Clause 28 (xv) (xxxv) of the Certified Standing Orders of the Corporation. By order dated 22-9-98, the Employer has imposed penalty of withholding one annual increment of the Party I for the year 1999. Lnd. Adv., Shri Kundaiker has argued that, in the written statement filed before the Tribunal, the Party II has referred to some past misconduct committed by the Party I. However, no such records were produced in inquiry proceedings and since no memorandum was issued in respect of such past conducts, the Party I had no opportunity of giving his explanation to such allegations. He therefore claims that the past conduct referred to in para two of the written statement cannot be considered while deciding the legality of punishment. He has further argued that in the case of State of Mysore v/s K. Manche Gowda (AIR 1964 SC 506) the Apex Court has held that the government servant must have reasonable opportunity to prove that the punishment proposed to be imposed is either not

called for or is excessive. He has further argued that the said order will adversely affect the terminal benefits due to the Party I at the time of his retirement. Relying upon the judgment of the Apex Court in the case represented in AIR 1983 SC 454, he has argued that the penalty imposed must be commensurate with the gravity of the misconduct. He has argued that the penalty imposed on the Party I is grossly disproportionate to the charges levelled. He has argued that in the case of R. M. Parmar, (1982 LAB IC 1031), the Gujarat High Court has held that in a disciplinary proceedings the punishment is not imposed to seed retribution or to give vent to the feeling of wrath. He claims that in the instant case these principles are not followed and that the penalty imposed is illegal and unjustified.

9. Learned Adv., Shri Nimbalker has argued that considering the gravity of the misconduct, the Party II would have been justified in dismissing the services of the Party II but the Party II has taken a lenient view and has withheld only two increments of the Party I. Learned Adv., Shri Kundaiker has further argued that the past conduct of the Party I is far from being satisfactory and the punishment imposed cannot be considered as grossly disproportionate.

10. I have perused the records and considered the arguments advanced by respective advocates. At the outset, it may be mentioned that in the case of *Bhagat Ram v/s State of H. P. reported in AIR 1983 SC 154.* Wherein the apex court has held that, *"the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution".*

11. There is no dispute that Section 11(A) empowers the Tribunal to substitute or mould the punishment imposed on the employee but it is also well settled that the scope of such interference is limited. In the case of *V. Ramana v/s A.P.S.R.T.C. reported in 2005 DGLS 399,* the apex court after considering several decisions on the issue has summed up, in paras 11 and 12 of the judgment the scope of interference by the adjudicating authority, which reads as under:

"The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision making process and not the decision.

To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

12. These principles have to be borne in mind while deciding whether the penalty imposed on the Party I need to be interfered with, substituted, moulded or reconsidered.

13. In the instant case, the Party I has been held guilty of collecting seven passengers on mini bus GA-01-X-0179 and collecting fares from the said passengers with an intention of misappropriating the same. The order dated 22-9-98 states that the said act is a gross misconduct and though justified a serious action as a gesture of sympathy, a lenient view was being taken and a minor penalty of withholding one increment was imposed with and intention of giving an opportunity to the Party I to improve in future. The Party II had not considered the past records of the Party I while imposing the said penalty and as such the penalty cannot be said to be illegal either on the ground that the records of the past conduct were not produced in the inquiry proceedings or because the Party II has made reference to some such instances of past records in the written statement filed before the Tribunal.

14. It is also pertinent to note that Party II has imposed only a minor penalty of withholding one annual increment of the Party I. The onus was on the Party I to prove that the said penalty imposed on him is shockingly disproportionate. The Party I has not adduced any evidence to prove that the said penalty is shockingly disproportionate or that there are any mitigating circumstances which warrant interference with the penalty imposed by the Party II. It is to be noted that the charge of misappropriation to money of the corporation, is a serious and grave charge. In the case of *V. Ramana v/s A.P.S.R.T.C (supra),* the Apex Court has held

that *"It is the responsibility of the conductors to collect correct fare charges from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if they do not collect any fare or the correct amount of fare. A conductor holds a post of trust. A person guilty of breach of trust should be imposed punishment of removal from service."*

15. Similarly in the case of *Dattatraya Mahadev Deshmukh v/s Maharashtra State Road Transport Corp. & anr. –2004 (3) Bom CR 343,* the Bombay H. C. has held that *"... the conductor of a public Transport Corporation is entrusted with a vital function relating to the issuance of tickets and the collection of fares. He is obliged to comply with the administrative direction, which are issued by the Corporation to him scrupulously. A breach of the direction issued by the employer is liable to lead to a loss of the revenue which is legitimately due and owning to the Corporation. In such cases, direct evidence of reissuance of tickets may not necessarily be forthcoming in all cases. The labour Court cannot however, shut its eyes to reality and condone the conduct of a conductor ... who has been found wanting in the due discharge of his official duties"*

16. In the instant case, the Party I had collected passengers which was in contravention of the instructions/directions issued by the Corporation and had further collected fares from the said passengers with an intention of misappropriating the same and causing loss to the revenue of the Corporation. The Party I has committed a serious misconduct and though such misconduct called for major penalty, the Party II has taken a very lenient view and imposed only a penalty of stopping one annual increment. Under no circumstances, this penalty can be considered as illegal, unjustified, and shockingly disproportionate as to warrant interference. Hence, issue No. 3 is answered in the negative.

17. *Issue No. 4:* The penalty imposed on the Party I by order dated 23-8-94 stopping one annual increment for the years 1994 & 1995 is held to be legal and justified. Hence, the Party I is not entitled for any relief. Issue No. 4 is answered accordingly.

17. Under the circumstances, and in view of discussion supra, I pass the following order:

ORDER

1. It is held that the action of M/s. Kadamba Transport Corporation Limited, in withholding one annual increment of Shri Ashok R. Naik, Driver with cumulative effect i.e. for the year 1999, is legal and justified.

2. The Party I is not entitled for any relief.

Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

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Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 26-03-2009 in reference No. IT/72/98 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 19th June, 2009.

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IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/72/98

Shri Pradeep Hublikar & another
Pimpalmol,
Collem-Goa. ... Workmen/Party I

V/s

The Executive Engineer,
W. D. IX, Irrigation Department,
Gogol, Margao-Goa. ... Employer/Party II

Workmen/Party I – Adv. Subhash Naik.

Employer/Party II – Adv. G. D. Kirtani.

AWARD

(Passed on this 26th day of March, 2009)

1. By order dated 27-7-98, the Government of Goa in exercise of the powers conferred under Sec. 10(1) (d) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) has referred the following dispute for adjudication of this Tribunal.

"1. Whether the action of the management of the Irrigation Department, Margao-Goa in

terminating the services of S/Shri Subhash B. Patil and Pradeep Hublikar, both Gauge Readers, with effect from 1-12-1996 is legal and justified?

2. If not, to what relief the workmen are entitled?"

2. On receipt of the reference, IT/72/98 was registered & notices were issued to both parties. The Party I/workmen have filed their claim statement at Exb. 5 and the Party II has filed its written statement at Exb. 6.

3. It is not in dispute that the Party I/workmen were engaged by the Party II Department as Gauge Readers, at Khandepar River, Maida, Collem-Goa. These workmen were assigned duties of measuring the level of water of Khandepar River, at regular intervals. They were paid daily wages at the rate of Rs. 22/- per day, which amount, was subsequently increased to Rs. 25/- per day. Services of these Party I/workmen were terminated on 16-10-1986. These Party I/workmen had raised a dispute, which was referred to the Tribunal & registered as IT/14/92. The said reference was decided by award dated 16-8-93, wherein, it was held that the services of these workmen were terminated in violation of Sec. 25F of the Act and hence the termination was held to be illegal and unjustified. The workmen were ordered to be re-instated with full back wages and all other consequential benefits.

4. The Party I/workmen have claimed that pursuant to the said award they were paid part of the back wages and were reinstated w.e.f 1-6-96. The Party I/workmen have claimed that they had worked as Gauge Readers at Khandepar River, continuously till 30-11-96, on payment of daily wages of Rs. 71.25 per day. On 1-12-96, the Party II once again terminated their service without giving any notice and without paying any notice pay and retirement compensation. The Party I/workmen have claimed that their termination is in contravention of Sec. 25F of the Act and hence the same is illegal and unjustified. The Party I/workmen have therefore sought re-instatement with full back wages and continuity in services.

5. The Party II has stated that the Party I/workmen were engaged as Gauge Reader only for six months in year from June to November every year. The Party II has stated that it has reinstated the workmen w.e.f June, 1996, and has also paid to each of the workmen an amount of Rs. 53,624/- towards back wages of six months in a year from 16-10-86 to 31-11-96. The Party II has stated that workmen were reinstated from June, 1996 till November, 1996 and engaged again on casual/daily wage basis from June, 1997 to November, 1997, June, 1998 to November, 1998 and so on as they are required to take Gauge Reading only during the said period of six months. The Party II has stated that since the workmen are working on seasonal basis, it was not required to issue any notice or to pay any retrenchment compensation.

6. Based on the aforesaid pleadings, the following issues were framed.

1. Whether the Party I prove that they were reinstated in service with full back wages and continuity in service in terms of the Award passed in IT/14/92?
2. Whether the Party I prove that the Party II terminated their service with effect from 1-12-96 which is illegal and unjustified?
3. Whether the Party I are entitled to any relief?
4. What Award?

7. Shri Subhash Naik has argued that in terms of the award in IT/14/92, the Party I/workmen were reinstated in service w.e.f. 1-6-96 and that their services were terminated again on 1-12-96. He has argued that the Party II had neither issued any notice nor paid notice pay or retrenchment compensation to these workmen. He has argued that the Party II has contravened the Provisions of Sec. 25F of the Act and hence the termination is illegal.

8. Learned Adv., Shri Kirtani has filed written arguments on behalf of the Party II. He has argued that the Party I/workmen are required to work only during the month of June to November every year. He has argued that the Party I/workmen are required to work only during the month of June to November every year. He has argued that the services of these Party I/workmen were not retrenched and as such they are not entitled for notice or retrenchment compensation. Learned Adv., Shri Kirtani has further argued that the Party I/workmen are not the workmen and that the Party II is not an Industry, within the meaning of Sec. 2(s) and 2(j) of the Act.

9. I have perused the records and considered the arguments advanced by respective parties and my findings on the aforesaid issues are as under:-

10. *Issue No. 1:* It is not in dispute that the Party I/ /workmen are employed by the Party II department as Gauge Readers, and they were paid daily wages as per the relevant rates. It is not in dispute that

the services of Party I/workmen were terminated on 16-10-86 and that the Party I/workmen had raised an industrial dispute which was referred to this Tribunal and was registered as IT/14/92. The said reference was decided by this Tribunal vide Award dated 16-8-95. The Party I/workmen have placed on record the copy of the gazette dated 11-1-96 at Exb. W-1, wherein the award was published. A perusal of the said award clearly indicates that even in the previous reference IT/14/92, the Party II had denied the status of the Party I as 'the workmen' and had claimed that it is not 'an industry' within the meaning of the Act. Issues in this regards were framed and my learned predecessor had given a clear finding that the Party I/ /workmen are 'the workmen' within the meaning of Sec. 2(s) of the Act and that the Party II is an 'industry' within the meaning of Sec. 2(j) of the Act. This award has not been challenged and since the award has attained finality, the Party II cannot reagitate the same issues in the subsequent reference, involving the same parties. Hence, I am unable to accept the contention of Learned Adv., Shri Kirtani that the Party I are not the workmen of Sec. 2(j) of the Act.

11. A perusal of the award (Exb. W-1) indicates that in the earlier reference being IT/14/92, the workmen had challenged their termination w.e.f. 16-10-86, on the ground of non-compliance of provision of Sec. 25F of the act. The Party II had taken the plea that since the workmen were casual workers purely on temporary basis, the question of giving notice or paying wages in lieu of notice did not arise. After considering the evidence on record and the arguments advanced by the respective parties, my learned predecessor has held that the termination of the workmen was not as a punishment and also did not within the exceptions to Sec. 2(oo) of the Act and as such termination of their services amounted to retrenchment within the meaning of Sec. 2(oo) of the act. It was further held that the evidence on record proved that the workmen had worked for more than 240 days during the period of 12 months preceding their termination and hence the provisions of Sec. 25F of the act were attracted. It was held that the Party II had not complied with the provisions of Sec. 25 F and hence the act of the Party II in terminating the services of the workmen was illegal.

12. In view of these findings the workmen were ordered to be reinstated with full back wages and all the other consequential benefits. It is not in dispute that pursuant to this award passed in IT/14/92 (Exb. W-1) the Party II had reinstated the workmen w.e.f. 1-6-96 and had paid to them back wages, for a period of six months in a year, w.e.f. 16-10-86. Issue No. 1 is answered accordingly.

13. *Issue No. 2:* The workmen were reinstated in service w.e.f. 1-6-96. The Party II had terminated the services of these workmen w.e.f. December, 1996. These workmen were neither issued notice nor paid notice pay or retrenchment. Hence, the question that falls for determination is whether the termination of the workmen, effected from December, 1996, amounts to retrenchment and whether this termination is illegal for contravention of Sec. 25F of the Act.

14. As stated earlier, the Party I/workmen were appointed as Gauge Readers to read the water level of the River Khandepar. The case of the Party II is that such work i.e. the work of measuring the water level is carried out only from June to November and that no such work is available for the rest of the year. In other words the case of the Party II is that the Party I/workmen were employed as casual workers to carry out specific type of work only during specific period. The pleadings in the written statement indicate that the services of these workmen were terminated during the off-season i.e. from December to May and they were re-employed during the next season i.e. from June to November. The Party I/workmen have not rebutted these pleadings by filing any rejoinder. Even in their evidence before the Tribunal, the workmen Subhash Patil (W-1) has deposed that he was reinstated on 1-6-96 and that his services were terminated on 30-11-96. In his cross-examination, he has stated that presently the Gauge Reading is done from June to November, every year. He has deposed that after termination of his services on 30-11-96, he was re-employed w.e.f. 1-6-97 till 30-11-97, from 1-6-98 till 30-11-98, from 1-6-99 till 30-11-99, from 1-6-2000 till 30-11-2000 and till date he continues to work during such period. He has stated that he does not know whether any Gauge Reading is done from December to May. He has further stated that he is paid daily wages only from June to November of each year. He has further admitted that from the year 1996 until this date he has not worked during the period from December to May and that he is not paid wages for this period.

15. The second workman, Shri Pradeep Hubliker (W-2) has also deposed that he was reinstated on 1-6-96. He has deposed that he had worked as a Gauge Reader until 30-11-96 and he was told not to report for duties from 1-12-96. He has also admitted

that presently the Gauge Reading is done only during the period from June to November of each year. He has deposed that he was re-employed in 1-6-97 until 30-11-97, from 1-6-98 until 30-11-98, from 1-6-99 to 30-11-99, from 1-6-2000 until 30-11-2000 and from 1-6-2001 till 30-11-2001. He has admitted that he has not worked from December to May and that he was not paid any wages during this period.

16. The evidence of both these workmen amply proves the case of the Party II that these workmen were employed as casual workers for specific type of work i.e. Gauge Reading, which was to be carried out only during a specific period i.e. from June to November. The work of Gauge Reading was not available from December to May and as such their services were discontinued during this period and they were re-employed in the following year from June to November and they were paid daily wages only during the period they rendered services i.e. from June to November of each year. In the case of Batala Co-operative Sugar Mills Ltd., v/s Sowaran Singh 2005 (8) SCC 481, the Apex Court has reiterated that when the worker is engaged for specific work and for a specific season and when they ceased to work on closure of the season, cessation of such seasonal work does not amount to retrenchment in view of clause (bb) of Sec. 2(oo) of the Act. These principles are further reinstated in the case of Ajnala Co-op. Sugar Mills Ltd., v/s Sukhraj Singh reported in 2007(7) SCR 79.

17. In the instant case, as stated earlier the Party I/workmen were engaged on daily wages and they were engaged as Gauge Readers only from June to November of every year. No such work was carried out from December to May and as such, the services of these workmen were discontinued during this period. In the light of the judgments of the Apex Court in the previously mentioned judgments cessation of work at the end of the season cannot be considered as retrenchment.

18. It is also to be noted that the evidence of both these workmen and the evidence of Balkrishna Desai, Asst. Engineer, Sub-Division II WK Div (IX) in Water Resources Department at Gogol viz-a-viz, the muster roll of the Party I/workmen, at Exb. E-1 colly and the statement at Exb. 2 clearly indicates that the Party I/workmen had not worked continuously for 240 days in the year preceding their termination and as such even otherwise the provisions of Sec. 25 F are not applicable. This being the case, the act of the Party II in terminating the services of the Party I/workmen cannot be said to be illegal or unjustified. Issue No. 2 is answered in the negative.

19. *Issue No. 3:* The Party I/workmen had challenged their termination w.e.f. 1-12-96, on the ground of contravention of Sec. 25F of the act. It is held that the provisions of Sec. 25F of the act are not applicable and that the termination is not illegal or unjustified. This being the case the Party I/ /workmen are not entitled for any relief. Issue No. 3 is answered accordingly.

20. Under the circumstances, and in view of discussion supra, I pass the following order:

ORDER

1. The action of the management of the Irrigation Department, Margao-Goa in terminating the services of S/Shri Subhash B. Patil and Pradeep Hublikar, both Gauge Readers, with effect from 1-12-1996 is held to be legal and justified.

2. The Party I/workmen are not entitled for any relief.

Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

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Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 16-04-2009 in reference No. IT/50/2004 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 19th June, 2009.

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IN THE INDUSTRIAL TRIBUNAL
AND LABOUR COURT
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble
Presiding Officer)

Ref. IT/50/2004

Shri Ashok Kumar Das,
C/o Franky Pereira,
Xirro, Carmona-Goa. ... Workman/Party I

V/s

M/s. Royal Goan Beach Resort P. Ltd,
M/s. Haathi Mahal Resort Hotel,
Mobor,
Cavelossim-Goa. ... Employer/Party II

Workman/Party I represented by Shri B. B. Naik.

Employer/Party II represented by Adv. M. S. Bandodkar.

AWARD

(Passed on this 16th day of April, 2009)

By order dated 23-11-2004, the Government of Goa in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the action of the management of M/s. Royal Goan Beach Resort P. Ltd., Haathi Mahal Resort Hotel, Cavelossim in terminating the services of Shri Ashok Kumar Das, G.T.M. Plumber, with effect from 2-1-2004 is legal and justified?

(2) If not, to what relief the workman is entitled?"

2. Notices were issued to both parties. The Party I filed his claim statement at Exb. 4. The Party II filed its written statement at Exb. 5. The rejoinder of the Party I is at Exb. 6.

3. The Party I was in service of the Party II as a G.T.M. Plumber from 13-12-1999 till the date of his termination i.e. till 2-1-2004. The Party I has stated that he was employed by the Party II to carry out permanent nature of work. The Party I further stated that in order to deprive him permanency and the facilities of permanent workmen, the Party II engaged in unfair labour practice by giving artificial breaks and by forcing him to sign a contractual appointment. The Party I stated that he was assured by the Party II that his services would be regularized. However, instead of regularizing his services, the Party II terminated his services. The Party I has stated that he had rendered continuous services of 240 days in the twelve months preceding his termination. The Party I has stated that the Party II has violated Section 25-F of the Industrial Disputes Act, 1947. The Party I has stated that Party II had engaged more than 150 workmen despite which Party II did not seek permission from the appropriate Government and his thereby violated provisions of Chapter V-B of the Industrial Disputes Act, 1947. The Party I, therefore, claimed that his termination is illegal and unjustified and he has sought re-instatement in service with full back wages with continuity in service.

4. The Party II has stated that the appointment of Party II was for a fixed term period specified in the contractual agreement which was accepted by the Party I. The Party II has denied that the Party I was appointed on a regular post or that he was assured that he would be regularized. The Party II further stated that the termination of the Party I was on account of non-renewal of the contract of appointment and as such, the provisions of Sec. 25-F are not applicable. The Party II has further stated that the Party I is gainfully employed and that he is not entitled for any reliefs.

5. Based on the aforesaid pleadings, following issues were framed at Exb. 7:

ISSUES

1. Whether the reference is bad in law?
2. Whether Party II terminated services of Party I?
3. Whether act of Party II in terminating services of Party I is legal and justified?
4. Whether the Party I is entitled to relief's as prayed for?
5. What Award?

6. The matter was posted for evidence. However, during the pendency of the proceedings, the Party I as well as the Representative of the Party II remained present before the Tribunal on 2-4-2009 alongwith their Representative/Advocate and stated that they have settled the matter amicably. The parties have filed the consent terms at Exb. 10. These terms are duly signed by the parties and the said terms are acceptable to them. In my opinion, these terms are in the interest of the workman and hence these terms are taken on record and the Order is passed as under:-

ORDER

1. It is agreed between the parties that the management of M/s. Royal Goan Beach Resort at Haathi Mahal, Mobor, Cavelossim, Salcete-Goa, shall pay in total a sum of Rs. 48,602/- (Rupees Forty

eight thousand six hundred two only), by way of 3 installments:-

(a) 1st installment of Rs. 18,000/- (Rupees Eighteen thousand only) bearing cheque No. 12551 dated 1-4-2009 drawn on HDFC Bank, payable at par.

(b) 2nd installment of Rs. 18,000/- (Rupees Eighteen thousand only) bearing cheque No. 12487 dated 20-4-2009 drawn on HDFC Bank payable at par.

(c) 3rd installment of Rs. 12,602/- (Rupees Twelve thousand six hundred two only) bearing cheque No. 012519 dated 18-4-2009 drawn on HDFC Bank payable at par.

2. The above amount of Rs. 48,602/- (Rupees Forty eight thousand six hundred two only) shall include all his claims arising out of the present reference No. IT/50/2004 and his employment, including any claims of earned wages, bonus, gratuity, leave encashment, retrenchment compensation, ex-gratia etc. or any other claim which can be computed in terms of money.

3. It is agreed that Shri Ashok Kumar Das shall accept the said amount as mentioned in the clause (1) hereinabove in full and final settlement of all his claims arising out of the present reference and arising out of his employment including any claim of earned wages, bonus, gratuity, leave encashment, retrenchment compensation, ex-gratia, etc., or any other claim which can be computed in terms of money, in complete satisfaction of all his claims including the claim made in the present reference No. IT/50/2004 and further confirm that he shall have no claim of whatsoever nature against the company including any claim of re-instatement and/or re-employment.

No order as to costs. Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal &
Labour Court.

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Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 28-03-2009 in reference No. IT/73/89 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 22nd June, 2009.

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IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/73/89

Shri Gunaji Rasaikar & 12 others,
Rep. by Goa Trade & Commercial
workers Union,
Velho Building, 2nd Floor,
Panaji-Goa. … Workmen/Party I

V/s

M/s. Antonio Pereira & Co.,
Sawarfond,
P. O. Cortalim,
Sancoale-Goa. … Employer/Party II

Workmen/Party I – Adv. Suhas Naik.

Employer/Party II – Adv. P. J. Kamat.

AWARD

(Passed on this 28-3-2009 day of March, 2009)

1. By order dated 26-9-89, the Government of Goa, in exercise of the powers conferred under Sec. 10(1) (d) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) has referred the following dispute for adjudication of this Tribunal.

"1. Whether the action of the management of M/s. Anotonio Pereira and Company, Sancoale in terminating the services of the following 13 workmen with effect from 30-5-1989 is legal and justified?

(1) Shri Gunaji Rasaikar, Cutter.
(2) Shri Narayan Rasaikar, Cutter.
(3) Shri Raju Dessai, Welder.
(4) Shri Devidas Naik, Welder.
(5) Shri Magnus Mendes, Welder.
(6) Shri Santosh Naik, Welder.
(7) Shri Santan Colaco, Welder.
(8) Shri Anthony D'Souza, Welder.
(9) Shri Salvador Rodrigues, Welder.
(10) Shri Devanand Naik, Supervisor.

(11) Shri Alex Fernandes, Fitter.
(12) Shri Mukund Rasaikar, Cutter/Welder.
(13) Shri Mohan Naik, Fitter Cutter.

2. If not, to what relief the workmen are entitled?"

2. The Party I/Union has claimed that the thirteen workmen named in the reference were the permanent workmen of the Party II, a Contractor firm which undertakes contracts of repairs and maintenance of ships and barges. The Party I has claimed that the said workmen had joined the Union on 4-12-88 and this fact was informed to the Party II. The Party I has stated that the Party II had started harassing and victimizing the workmen for joining the Union. The Party I has stated that it had raised Charter of Demands but the Party II did not concede to these demands and the conciliation ended in failure. Pursuant to this the Party II refused employment to the eleven workmen w.e.f. 30-5-89. The Party I raised an industrial dispute and on the same day the Party II refused employment to two more employees.

3. The Party I has stated that the services of these workmen were terminated mainly for joining the Union. The Party I has stated that the Party II had neither issued notices nor paid retrenchment compensation. The Party II has also not followed 'First Come-Last Go' principle. The Party I has therefore claimed that the termination of these workmen is illegal and unjustified and has sought re-instatement with all consequential benefits.

4. The Party II has claimed that the Union had not raised the dispute of retrenchment on the Management. The Party II has denied victimisation and has further stated that the maintenance work of ships and barges are mainly seasonal-carried out during the rainy season. The Party II has stated that it has two permanent employees and that it engages some temporary/casual workers depending upon the volume/availability of work. The Party II has stated that these workmen had not rendered continuous services of 240 days. The Party II has further stated that the services of these workmen were terminated as no work could be provided to these workmen and they were told that they would be called back as and when there was work. The Party II has further stated that during the pendancy of the conciliation proceedings the Party II got some repair work and individual letters were sent to these workmen to resume duties but they refused to join the duties. The Party II has stated that these workmen are employed with M/s. Bakle Shipyard at Undir and had therefore refused to join service. The Party II has stated that the termination of services of these workmen does not amount to retrenchment and that the workmen are not entitled for any relief.

5. Based on the aforesaid pleadings, the following issues were framed.

1. Whether Party I/workmen proves that the Party II did not follow the principles of "First-come-last-go" in retrenching the services of its 13 workmen named in the reference and hence the termination is illegal?
2. Whether Party I proves that Party II failed to issue the retrenchment notice and pay the retrenchment compensation to its 13 workmen named in the reference and hence the termination is illegal?
3. Whether Party I proves that the Party II has employed new workmen after retrenching the 13 workmen named in the reference?
4. Whether Party I proves that the action of the management of Party II in terminating the services of 13 workmen named in the reference w.e.f 30-5-89 is illegal and unjustified?
5. Whether Party II proves that the 13 workmen named in the reference were casual/ /temporary workmen and hence they have no lien over the employment?
6. Whether Party II proves that the 13 workmen named in the reference were given an opportunity to work, which they refused?

6A. Whether the Party II proves that no dispute of retrenchment was raised against the Party II by the Union or the workmen and hence the reference is not maintainable?

7. Whether Party I is entitled to any relief?
8. What Award or Order?

6. Learned Adv., Shri S. Naik argued on behalf of the Party I and Learned Adv., Shri P. J. Kamat has argued on behalf of the Party II. I have perused the records and considered the arguments advanced by respective parties and my findings on the aforesaid issues are as under:

7. It is not in dispute that the workmen named in the reference were employed by the Party II and their services were terminated w.e.f 30-5-89. The question is whether these workmen were in continuous service of 240 days and whether their termination is illegal for non-compliance of mandatory provisions of Sec. 25 F & 25 G of the Act.

8. It is pertinent to note that in the claim statement the Party I had not stated since when these workmen were working for the Party II. There are no pleadings in the claim statement to indicate that these workmen had rendered continuous service of 240 days prior to their termination. In paras 3 & 13 of the written statement, the Party II had specifically stated that none of these workmen had rendered 240 days service in a year. Despite these specific averments, the Party I did not file any rejoinder and consequently did not deny the averment made in paras 3 & 13 of the written statement that these workmen had not worked continuously for 240 days. Now coming to the evidence on record, the witness, Shri Narayan Palekar, the Joint Secretary of the Union has not even made a statement that these workmen had rendered service of 240 days. In his cross examination, he has stated that he has a document to show that these workmen were working since 1983 & has produced a statement at Exb. W-8 which contains the names of the workmen, per day wages and the date of their joining. He has stated that the said statement was submitted by the workmen when they had joined the Union and signed the resolution to that effect. He has admitted that the said statement is not signed either by the workmen or by any other person. The evidence of the witness No. 2 Gunaji Rasaikar who is one of the workmen, indicates that he had obtained the signatures of the workmen on the resolution at Exb. W-1 colly and handed over the same to the president of the Union. His evidence does not indicate that he had also prepared the statement at Exb. W-8 or that he had also submitted the said statement alongwith the resolution at Exb. W-1 colly. The third witness Alex Fernandes, who is also one of the workmen had signed the resolution at Exb. W-1 colly in the office of the president of the Union. His evidence does not indicate that they had also submitted the statement at Exb. 8 alongwith the resolution or that they had given to the Union the details contained in the statement at Exb. W-8. Thus, the evidence of both these workmen does not indicate that the statement at Exb. W-8 was prepared or submitted by the workmen.

9. It is also pertinent to note that the witness Alex Fernandes has deposed that he was working for the Party II for about ten years prior to the termination of his services. The services of the workmen were allegedly terminated on 30-5-08 and since the witness Alex Fernandes has stated that he was working for the Party II since about ten years prior to his termination, it would mean that he was employed with the Party II since 1979. However, the statement at Exb. W-8 does not indicate that this witness was working for the Party II since May, 1984. This inconsistency casts a doubt on the veracity of the evidence of this witness or the authenticity of the statement at Exb. W-8. The Party I has also not adduced any evidence to prove the authenticity of the statement at Exb. W-8 and as such no relevance can be placed on the said statement. Apart from the said statement at Exb. W-8, the Party I has not adduced any evidence to prove that the workmen named in the reference were in continuous employment for 240 days in the preceding one year prior to the termination. In the case of Range Forest Officer v/s S.T. Hadimani reported in 2002 I CLR 922, the Apex Court has held that "In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman, on this ground alone; the award is liable to be set aside". From the principles laid down in the aforesaid judgment it is crystal clear that not only the burden of proof lies on the workman to prove that he had worked continuously for 240 days in a year preceding his termination, but this has to be proved by tangible evidence and not merely by filing his own affidavit. These principles have been reiterated in the case of Surendranagar District Panchayat & Anr v/s Jethabhai Pitamberbhai (2006 I CLR 3).

10. In the present case, apart from the statement at Exb. 8, the Party I has not produced any material to prove that the workmen had worked for 240 days. As stated earlier, the Party I has failed to prove authenticity of this statement and as such the said statement cannot be considered as sufficient evidence to come to the conclusion that these workmen had worked for 240 days. This being the case, the workmen have failed to prove compliance with the requirement of Sec. 25 B of the Act.

11. It is pertinent to note that the Party II had stated that it is mainly doing the work of Mainland Docks Pvt. Ltd., repairing, and maintaining the barges. The Party II has stated that the said work is mainly seasonal i.e. it is normally done during monsoon season. The Party II has stated that

depending on the volume of work it used to engage temporary casual workmen during the said season. In support of this contention, the witness Shri Damaciano Pereira, who is one of the partners of the Party II firm, has deposed that the Main land Docks were the contractors for Chowgule & Co. and were undertaking the works of repairs of barges of M/s. Chowgule & Co. he has deposed that the Party II was one of the sub-contractors for the Main Land Docks & was carrying out the works of Main Land Docks. He has deposed that the Party II was repairing the hull of the barges and that this work was done during rainy season i.e. from June to September during which period no shipment of one was done. He has deposed that the repairing of hull involved the work of cutting, fitting and welding & that it had employed fitters, cutters, welders, and helpers on daily wages for carrying out the said work. He has deposed that these workers were employed only during the rainy season. He has deposed that the workmen named in the reference had worked for the Party II only during the period from June to September & that even during this period they have not worked continuously but were employed only as and when required. He has deposed that the Mainland Docks did not allot any work to the Party II from June, 1989 and since there was no work, the said workers were not called to work.

12. It is to be noted that both the workmen Shri Gunaji Rasaikar & Alex Fernandes have admitted in their cross examination that Main land Docks is a company owned by M/s. Chowgule and Co. and that the barges owned by Chowgule Co. are repaired at Mainland Docks. Both these witnesses have admitted that the Party II was a contractor engaged by Mainland Docks Co. to repair the barges used for transportation of ore. The witness Shri Alex Fernandes had admitted that the barges are repaired during the monsoon season and during the remaining period of eight months the barges are used for transporting ore. After having corroborated the statement of Damaciano Pereira, this witness added that the barges were also repaired during the other season. It is pertinent to note that the Party II has specifically pleaded in the written statement that the barges were repaired only during the monsoons. The Party I had not filed a rejoinder and had thereby not denied the statement that the barges were repaired only during monsoons. Even in the claim statement at Exb. 2, the Party I had not specifically stated that the Party II was carrying out the repairs throughout the year or that the services of these workmen were engaged throughout the year. The claim statement does not state since when these workmen were working for the Party II and infact does not even state that these workmen had rendered continuous service for 240 days in a year. In the absence of such pleadings, the statement made by the witnesses, Gunaji Rasaikar & Alex Fernandes cannot be looked into. The uncontroverted pleadings in the written statement as well as the evidence of Damaciano Pereira prove that the barges were repaired only during monsoons and that the services of these workmen engaged on daily wages only during the rainy season, that too depending upon the availability of work. The pleadings as well as the evidence of Damaciano Pereira indicate that the Party II had no work in June, 1989 and as such, workmen had been disengaged for non availability of work. Once it is held that the workmen were not working throughout the season but were employed only during monsoon season, and ceased to work after the said season, such cessation would not amount to retrenchment. Reliance is placed on the case of Morinda Co-op. Sugar Mills Ltd. v/s Ram Kishan & ors. reported in (1995) 5 SCC 653. Even otherwise, the witnesses have merely stated that some junior employees were retained in service while terminating the services of these workmen. The Party I witnesses have not given any details such as the names of the said employees, the date or the year in which the said employees were employed. This being the case, apart from the bare statement of the witnesses, there is no evidence to prove that the Party II had retained junior employees while terminating services of the senior employees. Hence, there is no violation of Sec. 25G. The Party I has failed to prove that they had rendered continuous service of 240 days and as such these workmen were not entitled for retrenchment notice and compensation as envisaged under Sec. 25F of the Act. Hence, issues No. 1 & 2 are answered in the negative and issues No. 4 & 5 are answered in the affirmative.

13. *Issues No. 3 & 6:* The Party I has complained violation of Sec. 25H of the Act whereas the Party II has stated that the workmen did not join duties even though they were offered work. In this regard, the witness, Shri Narayan Palekar has stated that vide letters dated 7-7-89 the Party II had called upon these workmen to resume duties. He has produced copies of two such letters at Exb. W-6 colly. He has deposed that the said letters did not mention anything about past service, wages, and retrenchment compensation. In his cross examination, he has admitted that it was stated in the said letters (Exb. W-6 colly) that the conditions of service of the concerned workmen would be the

same as applicable before his termination. The witness has stated that he had advised the workmen not to report for work because the letters did not state anything about their past service, wages and retrenchment compensation. It may be mentioned here that the witnesses, Gunaji Rasaikar has stated that he does not know whether the Party II had issued any letter/notice to the workmen asking them to resume duties and whether the employees had refused to resume duties. Whereas the witness Alex Fernandes has specifically denied that, the Party II had issued any such notice and called upon the workmen to resume duties. As stated earlier, the evidence of Shri Narayan Palekar clearly indicates that the Party II had issued notices to all the workmen and had asked them to resume duties. He has produced the said letters at Exb. W-6 colly and one of the letters at Exb. W-6 colly was addressed to the witness, Gunaji Rasaikar. The evidence of Narayan Palekar and the letters at Exb. W-6 colly is sufficient to belie the evidence of both these witnesses namely Gunaji Rasaikar and Alex Fernandes. The evidence on record clearly indicates that the Party II had called upon the workmen to resume duties and that the workmen had refused to join duties apparently at the advise of the Union. There is no evidence to prove that the Party II had already engaged new employees before issuing letters at Exb. W-6 colly or that the said letters were issued only to defeat the claim of the Party I. This being the case the Party I cannot allege violation of Sec. 25 F. I agree with learned Adv., Shri P. J. Kamat that since the workmen had chosen not to report for duties, they cease to have lien over the job and cannot have any grievance even if the Party II has appointed new employees in their place. This being the case, issue No. 3 is answered in the negative and issue No. 6 is answered in the affirmative.

14. *Issue No. 6A*:- The Party II has stated that the Party I had not raised dispute of retrenchment and hence the reference is not maintainable. Learned Adv., Shri. P. J. Kamat has argued that the dispute, which was raised by the Party I vide letter dated 31-5-1989 (Exb. W-3) was of lock out and not of termination of services. He has argued that the reference pertains to the termination of 13 employees and since no such demand was raised either directly on the management or indirectly through the Conciliation Officer, the reference is not maintainable. He has relied upon the judgment in the case of Sindhu Resettlement Corporation Ltd., v/s Industrial Tribunal Gujrat, AIR 1968 SC 529. In the aforesaid case, the workman was in service of the appellant company and his services were placed at the disposal of Sindhu Hotchief for four and a half years and was confirmed in the said company. Thereafter, Sindhu Hotchief terminated services of the workman after paying retrenchment compensation and all other dues. Thereafter the workman reported to the appellant company and requested for giving posting orders and when the appellant company informed him of its inability to re-employ him, the workman demanded retrenchment compensation, which demand was also refused. The Union had raised a dispute with the management of appellant company and claimed retrenchment compensation. Subsequently, the Government had referred the dispute relating to re-instatement. The Apex Court held that the demand pressed with the management was in respect of retrenchment compensation and not re-instatement. It was held that since no dispute about re-instatement was raised, the state Government was not competent to refer a question of re-instatement as an industrial dispute for adjudication by the Tribunal. The dispute that the State Government could have referred competently was the dispute relating to payment of retrenchment compensation by the appellant company to the workman, which was the only subject matter of dispute between the parties. It was held that the reference made by the Government was not competent.

15. In the instant case, it is not in dispute that the persons named in the reference were employed by the Party II and they were refused employment w.e.f. 30-5-89. The Union had raised the dispute vide letter dated 31-5-89, wherein it was stated that the eleven workmen have been "locked out of employment". The Union had demanded full wages for the entire period of lock out with continuity of service. It is thus evident that the dispute raised by the Party I was regarding lock out and not termination or retrenchment of service. It is however to be noted that at no point of time had the Party II declared a lock out but as averred in para of the written statement, the Party II had infact terminated the services of the workmen w.e.f. 30-5-89. It is to be noted that the Party II had not issued any written termination order. There is also nothing on record to indicate that the Party II had informed the Party II that their services were terminated or that they were refused employment for non-availability of work order. It is possible that the Union and the workmen were not aware about the termination of service and had considered the termination as - "the refusal by an employer to continue to employ any number of persons employed by him"

and had therefore raised dispute relating to lock out. The Deputy Labour Commissioner had issued notice to the Party II and in the course of the discussion the Party II had made known to the Party I that the services of the workmen were terminated for non availability of work. The minutes of the conciliation proceedings at Exb. W-4 colly and the failure report at Exb. W-7 indicates that in the said conciliation proceedings the Party I had challenged termination and had sought re-instatement of the said workmen. The failure report further indicates that during the discussion, the Union vide letter dated 20-6-89, had enlarged the (scope of) the dispute stating that the management had refused employment to 13 workmen. In the said conciliation proceedings, the Union had challenged the legality of the termination and had demanded re-instatement with continuity in service and full back wages.

16. It is thus clear that though the Party I had initially raised the dispute relating to lock out, subsequently, i.e. after being informed about the termination of services and the reasons thereof, the Union had challenged the termination and demanded re-instatement. Needless to state that the language or the form in which the demand was couched is not material, what is material is what was the grievance of the workmen, which was espoused by the Union and what the Tribunal is called upon to adjudicate. In the instant case, as stated earlier, though the Union had initially complained of the workmen being locked out, the real grievance was about termination of their services, which grievance/dispute was subsequently raised and demand was made for re-instatement. In view of these distinguishing facts, the decision in the case of Sindhu Resettlement (supra) is not applicable to the facts of the present case. It is held that the dispute raised by the Union and referred to the Tribunal by the Government relates to the termination of services of the workmen w.e.f 30-5-89 and hence the reference is maintainable. Hence, issue No. 6A is answered in the negative.

17. Under the circumstances, and in view of discussion supra, I pass the following order:

ORDER

1. The action of the management of M/s. Anotonio Pereira and Company, Sancoale, in terminating the services of the following 13 workmen with effect from 30-5-1989 is legal and justified?

1. Shri Gunaji Rasaikar, Cutter.
2. Shri Narayan Rasaikar, Cutter.
3. Shri Raju Dessai, Welder.
4. Shri Devidas Naik, Welder.
5. Shri Magnus Mendes, Welder.
6. Shri Santosh Naik, Welder.
7. Shri Santan Colaco, Welder.
8. Shri Anthony D'Souza, Welder.
9. Shri Salvador Rodrigues, Welder.
10. Shri Devanand Naik, Supervisor.
11. Shri Alex Fernandes, Fitter.
12. Shri Mukund Rasaikar, Cutter/Welder.
13. Shri Mohan Naik, Fitter Cutter.

2. The aforesaid workmen are not entitled for any relief.

Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

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Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 26-03-2009 in reference No. IT/25/93 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 22nd June, 2009.

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IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/25/93

Workmen rep. by
The Secretary,
United Bargemen's Association,
Damodar Polyclinic, 3rd Floor,
Vasco-Da-Gama, Goa. ... Workmen/Party I

V/s

The Director,
M/s. Cabral & Co. Pvt. Ltd.,

Melquiedes Bldg., 1st Floor,
Fr. Jose Road,
Vasco-Da-Gama, Goa. … Employer/Party II

Workman/Party I – present in person.

Employer/Party II – Adv. G. K. Sardessai.

AWARD (Part I)

(Passed on this 26th day of March, 2009)

1. By order dated 15-3-1993, the Government of Goa, in exercise of the powers conferred by clause D of sub-section I of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) has referred the following dispute for adjudication of this Tribunal.

"1. Whether the action of the management of M/s. Cabral & Co. Pvt. Ltd., Vasco, in (1) terminating the services of Shri Paulo D'Sa, Sailor, with effect from 3-10-92, (2) refusing employment to Shri Pascoal Faris, Khalasi, with effect from 16-11-90 is legal and justified?

2. If not, to what relief the above workmen are entitled?"

2. On receipt of the reference, notices were issued to the parties. The Party I filed his statement of claim at Exb. 3 and the Party II has filed its written statement at Exb. 5. The rejoinder of the Party I is at Exb. 6

3. The Party I/Union has stated that the workman, Pascoal Faria was employed on board barge 'Mayacab' w.e.f. 2-2-88. Due to recessionary trend in the business of hiring barges, the management decided to send the barge M. V. Mayacab beyond the limits of Goa, necessitating retrenchment of the crew employed thereon. The Union opposed the said move and after prolonged discussion with the Union a settlement was arrived at on 19-10-89. In terms of the clause 2 of the settlement, five members of the crew, whose names were shown in Annexure A, were treated as retrenched w.e.f. 18-10-89. In terms of clause 5, the management had agreed to give preferential treatment to the said workman shown in Annexure A, in accordance with Sec. 25-H of the Industrial Disputes Act, 1947 on permanent basis in the event of operation of the said barge by the employer in Goa on return. The Party I has stated that the said barge Mayacab was brought back to Goa and the Party II started operation of the same since 14-1-91. The Party I has stated that the management has re-employed four of the crew members but failed and neglected to re-employ Shri Pascoal Faria, one of the crew members who was retrenched. The Party I has stated that the action of the management is in violation of the terms of the settlement and is illegal.

4. The Party II has stated that the settlement dated 19-10-89 was signed under duress, coercion and pressure. The Party II has stated that on commencing the operation of the barge at Goa, it had offered re-employment to the crew referred to in Annexure A to the settlement. The Party II has stated that Pascoal Faria did not report for work while all others reported for work. The Party I has stated that even otherwise the said Pascoal was not competent and diligent in performing his duties. The Party II has therefore claimed that the action of the management in refusing employment to Pascoal Faria is legal and justified.

5. Based on the aforesaid pleadings, the following issues were framed.

1. Whether the Party I proves that the refusal of employment to the workman, Shri Pascoal Faria by the Party II is in violation of the settlement dated 19-10-89?
2. Whether the Party I proves that the termination of services of the workman, Shri Paul D'Sa by the Party II w.e.f. 3-10-92 is illegal and unjustified?
3. Whether the Party I proves that refusing employment to the workman, Shri Pascoal Faria by the Party II w.e.f. 16-11-90 is illegal and unjustified?
4. Whether the Party II proves that the reference is null and void for non application of mind on the part of the Government?

4A. Whether the Party II proves that the settlement dated 19-10-89 was signed by the Party II under threat, duress and coercion and hence it is null and void?

5. Whether the Party II proves that the workman, Shri Pascoal Faria was not competent, trustworthy, reliable and was also negligent in carrying out his duties and would refuse to obey the orders from the superiors and, therefore, he had no right for preferential employment under Sec. 25-H of the Industrial Disputes Act, 1947?
6. Whether the workman, Shri Paulo D'Sa and Pascoal Faria are entitled to any relief?
7. What Award?

6. The workman, Shri Pascoal Faria and the representative of the Party II appeared before this Tribunal on 26-8-08 along with their respective

advocates/representative and stated that the dispute between the workman Pascoal Faria & the management is amicably settled. They have placed on record consent terms at Exb. 25 and have prayed to draw a consent award. The terms at Exb. 25 are agreeable to the workman Pascoal Faria and the Party II and in my opinion, the same are in the interest of the workman. Hence, the terms are taken on record and the following order is passed in terms of the settlement at Exb. 25.

ORDER

1. That in the present matter it is agreed between the parties to settle the dispute for lumpsum payment of Rs. 50,000/- (Rupees Fifty thousand only) in full and final settlement of all his dues. The Party I is having no claim of whatsoever nature against the Party II/employer including reinstatement.

2. The Party II deposit the cheque of Rs. 50,000/- (Rupees Fifty thousand only) drawn in favour of Shri Pascoal Faria dated 16-8-08 drawn on the HDFC Bank Ltd., Vasco-Da-Gama, Goa.

3. The Party I agreed to issue the receipt for the said amount to the Party II.

Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

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IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT-I
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/25/93

Workmen rep. by
The Secretary,
United Bargemen's Association,
Damodar Polyclinic, 3rd Floor,
Vasco-Da-Gama, Goa. ... Workmen/Party I

V/s

The Director,
M/s. Cabral & Co. Pvt. Ltd.,
Melquiedes Bldg., 1st Floor,
Fr. Jose Road,
Vasco-Da-Gama, Goa. ... Employer/Party II

Workmen/Party I – absent.

Employer/Party II – Adv. G. K. Sardessai.

AWARD (Part II)

(Passed on this 26th day of March, 2009)

1. By order dated 15-3-1993, the Government of Goa, in exercise of the powers conferred by clause D of sub-section I of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) has referred the following dispute for adjudication of this Tribunal.

"1. Whether the action of the management of M/s. Cabral & Co. Pvt. Ltd., Vasco, in (1) terminating the services of Shri Paulo D'Sa, Sailor, with effect from 3-10-92, (2) refusing employment to Shri Pascoal Faris, Khalasi, with effect from 16-11-90 is legal and justified?

2. If not, to what relief the above workmen are entitled?"

2. On receipt of the reference, notices were issued to the parties. The Party I filed his statement of claim at Exb. 3 and the Party II has filed its written statement at Exb. 5. The rejoinder of the Party I is at Exb. 6

3. The Party I/Union has stated that the workman, Pascoal Faria was employed on board barge 'Mayacab' w.e.f. 2-2-88. Due to recessionary trend in the business of hiring barges, the management decided to send the barge M. V. Mayacab beyond the limits of Goa, necessitating retrenchment of the crew employed thereon. The Union opposed the said move and after prolonged discussion with the Union a settlement was arrived at on 19-10-89. In terms of the clause 2 of the settlement, five members of the crew, whose names were shown in Annexure A, were treated as retrenched w.e.f. 18-10-89. In terms of clause 5, the management had agreed to give preferential treatment to the said workman shown in Annexure A, in accordance with Sec. 25-H of the Industrial Disputes Act, 1947 on permanent basis in the event of operation of the said barge by the employer in Goa on return. The Party I has stated that the said barge Mayacab was brought back to Goa and the Party II started operation of the same since 14-1-91. The Party I has stated that the management has re-employed four of the crew members but failed and neglected to re-employ Shri Pascoal Faria, one of the crew members where were retrenched. The Party I has stated that the action of the management is in violation of the terms of the settlement and is illegal.

4. The Party II has stated that the settlement dated 19-10-89 was signed under duress, coercion and pressure. The Party II has stated that on commencing the operation of the barge at Goa, it had offered re-employment to the crew referred to in Annexure A to the settlement. The Party II has stated that Pascoal Faria did not report for work while all others reported for work. The Party I has stated that even otherwise the said Pascoal was not competent and diligent in performing his duties. The Party II has therefore claimed that the action of the management in refusing employment to Pascoal Faria is legal and justified.

5. Based on the aforesaid pleadings, the following issues were framed.

1. Whether the Party I proves that the refusal of employment to the workman, Shri Pascoal Faria by the Party II is in violation of the settlement dated 19-10-89?
2. Whether the Party I proves that the termination of services of the workman, Shri Paul D'Sa by the Party II w.e.f. 3-10-92 is illegal and unjustified?
3. Whether the Party I proves that refusing employment to the workman, Shri Pascoal Faria by the Party II w.e.f. 16-11-90 is illegal and unjustified?
4. Whether the Party II proves that the reference is null and void for non application of mind on the part of the Government?

4A. Whether the Party II proves that the settlement dated 19-10-89 was signed by the Party II under threat, duress and coercion and hence, it is null and void?

5. Whether the Party II proves that the workman, Shri Pascoal Faria was not competent, trustworthy, reliable and was also negligent in carrying out his duties and would refuse to obey the orders from the superiors and, therefore, he had no right for preferential employment under Sec. 25-H of the Industrial Disputes Act, 1947?
6. Whether the workmen, Shri Paulo D'Sa and Pascoal Faria are entitled to any relief?
7. What Award?

6. It may be mentioned here that the dispute between the workman Pascoal Faria and the Party II is settled as per the terms of settlement at Exb. 25. As regards the dispute between the workman, Paulo D'Sa and the Party II, the failure report at Exb. W-6 indicates that the Union had raised a dispute regarding refusal of employment to Pascoal Faria and illegal termination of services of Paulo D'Sa. The Union had sought reinstatement of Paulo D'Sa on the ground that the management had obtained his signature on the resignation letter forcibly and fraudulently. The conciliation proceedings ended in failure and the failure report was submitted to the Government based on which the dispute was referred to this Tribunal.

7. It may be mentioned here that the Union has not taken up or pleaded the cause of Paulo D'Sa in the claim statement at Exb. 3. Even in the evidence before the Tribunal, Peter Godinho, the Asst. Secretary of the Union has not made any reference to the termination of Paulo D'Sa. In other words, though the Union had raised the dispute regarding the termination of Paulo D'Sa, it has not pursued the said dispute. The workman, Shri Paulo D'Sa has also not pursued the matter in his individual capacity. This being the case, there are neither pleadings nor evidence on record to prove that the termination of Paulo D'Sa was illegal & unjustified and consequently said Paulo D'Sa is not entitled for any relief. Issue No. 2 is answered in the negative.

8. Under the circumstances and in view of the discussion supra, I pass the following order.

ORDER

1. The action of the management of M/s. Cabral & Co. Pvt. Ltd., Vasco in terminating the services of Paulo D'Sa, Sailor w.e.f. 3-10-92 is held to be legal and justified.
2. The workman, Paulo D'Sa is not entitled for any relief.

Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

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Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 16-03-2009 in reference No. IT/4/94 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 22nd June, 2009

IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT
AT PANAJI

(Before Smt. Anuja Prabhudessai, Hon'ble Presiding Officer)

Ref. No. IT/4/94

Shri Anand Naik & 7 others,
Near Cine Vishant,
Aquem Alto,
Margao-Goa. ... Workmen/Party I

V/s

Shri Ramakant Angle,
C/o M/s. Crunet Aerated
Waters Pvt. Ltd.,
P. B. No. 286,
Margao-Goa. ... Employer/Party II

Workmen/Party I - Shri K. V. Nadkarni.

Employer/Party II – Adv., Shri B. G. Kamat.

AWARD

(Passed on this 16th day of March, 2009)

1. By order dated 26-10-93, the Government of Goa in exercise of the powers conferred under Section 10 (1)(d) of the Industrial Dispute Act, 1947 (Central Act 14 of 1947) has referred the following dispute for adjudication of this Tribunal.

1. "Whether M/s. Crunet Aerated Waters Pvt. Ltd., Margao or Mr. Ramakant Angle was the employer in respect of the workmen namely:

   S/Shri Anand Naik.
   Shri Shekar Dessai.
   Shri Francisco Fernandes.
   Shri Rafiq Shaikh.
   Shri Babi Korgaonkar.
   Shri Santan Diniz.
   Shri Satyavan Hamlekar.
   Shri Ambesh Dinkar, employed at Ice Plant of M/s. Crunet Aerated Waters Pvt. Ltd., Margao.

2. Whether the termination of services with effect from 30-11-92 of the above 8 workmen by their employer, as the case may be, is legal and justified?

3. If not, to what relief the workmen are entitled?"

2. Notices were issued to all the parties to the reference. The Party I workmen, hereafter referred to as the workmen have filed their claim statement at Exb. 5 and the Party II(1) M/s. Crunet Company hereafter referred to as Party II(i) Company has filed its written statement at Exb. 6. The Party II (2) Shri Ramakant Angle hereafter referred to as the Party II (ii) Shri Angle has not filed any written statement despite due notice. The workmen have filed their rejoinder at Exb. 7.

3. The case of the workmen is that the Party II(i) company was engaged in manufacture of soft drinks and also owns an ice plant. The business of manufacture of cold drinks was closed down in the year 1985-86 and the services of the employees employed there were terminated. Despite in respect of the said closure/termination of services being IT/25/86 is pending before the Tribunal. The workmen have claimed that they were employed in the ice plant. In the year 1991, the Party II (i) Company entered into an agreement with the Party II (ii) Shri Angle for supply of minimum ten tons of ice per day. The workmen have claimed that the Party II (ii) Shri Angle issued letters dated 1-11-92 to the workmen purporting to post them at the ice factory of the Party II (i) Company. The workmen have further stated that by letters dated 30-11-92 the Party II (i) Company directed them to report to the Party II (ii) Shri Angle.

4. The workmen have claimed that they were in employment of the Party II (i) Company even prior to the agreement between the company & Shri Angle and were on the payroll of the company even after the said agreement. The workmen have stated that there was no employer-employee relationship between them and the Party II (ii) Shri Angle and as such said Angle was not competent to issue such letters. The workmen have stated that these letters were issued only to create evidence that they were the employees of Angle and this was done with an object of depriving them of the protection provided under the Indutrial Disputes Act. The workmen have stated that the letters dated 30-11-92 which amount to termination orders were issued during the pendancy of IT/25/86, in contravention of provisions under Sec. 33 of Industrial Disputes Act. The workmen have therefore claimed that their termination is illegal and that they are entitled for reinstatement with back wages and all consequential benefits.

5. The Party II (i) company has denied that the Party I workmen are its employees. The Party II (i) company has stated that the Party II (ii) Shri Angle was engaged as a supplier of ice to various customers in Goa. He had entered into an agreement with the company for supply of ten ton of ice per day. At the time of execution of the said agreement, he had proposed to lend some of his workers to

work in the ice plant of the company. Accordingly vide letters dated 1-11-91 Shri Angle posted these workmen in the ice plant of the company. These workmen were required to work under the control and supervision of the company and were also required to be paid by the company. The Party II (i) company has stated that by letter dated 30-11-92, the Party II (ii) Shri Angle terminated the agreement dated 31-10-91 so also the posting orders of these workmen in the ice plant. Because of thes workmen were reverted back to the Party II (ii) Shri Angle, w.e.f. 1-12-92. The Party II (i) company has stated that its relationship with the workmen was that 'Borrowing employer' and 'Transferee employer'. The Party II (i) company has stated that it has not terminated the services of the workmen but had reverted their services to their employer-Shri Angle and as such, it was not required to comply with provisions of Sec. 33 of the Industrial Dispute Act. The Party II (i) company has therefore claimed that the workmen are not entitled for any relief.

5. Based on the aforesaid pleadings, the following issues were framed:

1. Whether the Party I/Workmen prove that they were employed by the Party II M/s. Crunet Aerated Waters Pvt. Ltd., Margao-Goa and not by the Party II, Shri Ramakant Angle?
2. Whether the Party I/Workmen prove that the Party II M/s. Crunet Aerated Waters Pvt. Ltd., terminated their services in violation of the provisions of Sec. 33 of the I. D. Act, 1947?
3. Whether the Party I/Workmen prove that the termination of their services by the Party II M/s. Crunet Aerated Waters Pvt. Ltd., w.e.f. 30-11-92 is illegal and unjustified?
4. Whether the Party II M/s. Crunet Aerated Waters Pvt. Ltd., proves that its relationship with the Party I/Workmen was that of "Borrowing Employer" and "Transferee Employer"?
5. Whether Party I/Workmen are entitled to any relief?
6. What Award?

6. The workmen and the Party II (i) company have adduced oral as well as documentary evidence. Shri Nadkarni has argued on behalf of the workmen. He has argued that the evidence of the workmen viz-a-viz, the wage slips at Exb. W-1, W-9, W-14 & W-19 proves that the workmen were on the payroll of the Party II (i) company. He has argued that the Party II (i) company and the Party II (ii) Shri Angle had entered into an agreement whereby the Party II (i) Company had agreed to supply ten tons of ice per day to the Party II (ii) Shri Angle. The said agreement does not indicate that the Party II (ii) Shri Angle had agreed to post his employees in the ice plant. Shri Nadkarni has agreed that since the Party II (i) Company & the Party II (ii) Shri Angle had already entered into a written agreement, there could be no oral agreement regarding posting of these workmen to the ice plant. Shri Nadkarni has argued that these workmen were the employees of the Party II (i) company and their termination is illegal for violation of Sec. 25F & 33 of Industrial Dispute Act.

7. Learned Adv., Shri Kamat has filed written arguments on behalf of the Party II (i) company. He has argued that these workmen were the employees of the Party II (ii) Shri Angle and he posted them at the ice plant; vide letters dated 1-11-91. In terms of these letters, the workmen were placed under supervision and control of the Party II (i) company, the company was also required to pay to these workmen wages of Rs. 400/- per month. He therefore claims that these workmen cannot be considered as the employees of the Party II (i) company merely because the company had paid wages to these workmen as per the agreement with the Party II (ii) Shri Angle. Learned Adv. Shri Kamat has further argued that the evidence of the workmen proves that only 50% of their salary was paid by the Party II (i) company & the remaining 50% was being paid by the Party II (ii) Shri Angle & this fact itself proves that these workmen were the employees of Shri Agnel Learned Adv. Shri Kamat has further argued that the services of these workmen were posted by letters dated 1-11-91. None of these workmen had objected to this postings and this fact itself falsifies the claim of the workmen that they are the employees of the Party II (i) company. Learned Adv. Shri Kamat has argued that though the workmen were posted at the ice plant they continued to be the employes of the Party II (ii) Shri Angle & the Party II (i) company had exercised powers of control and supervision and paid wages to these workmen in tems of the agreement with Shri Angle. He has relied upon the judgment of the Apex Court in the case of the Manager M/s. Pyarchand Kesarimal Porwal Bidi Factory v/s Omkar Laxman Thenge & ors. reported in 1970 SC 823. Learned Adv. Shri Kamat has further argued that the Party II (i) company has not terminated services of the workmen and as such there is no contravention of provisions under Sec. 33 of the I.D. Act.

8. I have perused the records and considered the arguments advanced by the respective parties and my findings on the issues are as under:

9. *Issue No. 1 & 4:* It is not in dispute that the Party II (i) company owns an ice plant. It is also not in dispute that the Party II (i) Company had entered into an agreement dated 31-10-91 (Exb. E-16), with the Party II (ii) Shri Ramakant Angle, whereby the Party II (i) company had agreed to supply to Shri Angle ten tons ice per day. The case of the workmen is that they were in employment of the Party II (i) company even prior to the said agreement whereas the Party II (i) company has claimed that the workmen are the employees of the Party II (ii) Ramakant Angle and were posted at the ice plant since November, 1991. The question, which therefore arises, is whether the workmen are the employees of the Party II (i) company or whether they are the employees of the Party II (ii) Shri Angle.

10. It may be mentioned that the workman, Shri Anand Naik (witness No. 1) has deposed that he was working for the Party II (i) Company since 1-10-91. The workman Shri Ambesh Gaitonde (witness No. 2) has deposed that he was working for the Party II (i) company since September, 1989 and Shri Shaikh Rafiq Ahmed (witness No. 3) has deposed that he was working for the Party II (i) company since September, 1991. Whereas the workman Shri Babi Korgaonkar (witness No. 4) has deposed that he was working for the Party II (i) company since 1990. It may be mentioned here that the wage register at Exb. E-3 does not indicate that these workmen were in service of the Party II (i) Company prior to November, 1991. This being the case, apart from the bare statement of these workmen there is absolutely no evidence to prove that they were working for the Party II (i) company prior to November, 1991.

11. It may be mentioned here that Shri Premchand Borkar, Manager of the Party II (i) company has produced the agreement at Exb. E-16 whereby the Party II (i) Company had agreed to supply to the Party II (ii) Shri Angle ten tons of ice per day. He has deposed that it was also orally agreed that the Party II (ii) Shri Angle would depute his own workers to work at the ice plant to ensure production of required quantity of ice. He has deposed that it was agreed that the said workers would work in the ice plant under the supervision of the company. Accordingly, these workmen came to the plant on 1-11-91 with letters of posting with copies which are at Exb. W-3, colly W-10 colly, W-13 colly & W-21 colly issued by Shri Angle. He has deposed that he did not accept the said letters as there were some blanks and that thereafter the workmen brought fresh letters of posting & that on receipt of the said letters, the company also issued posting orders to these workmen. He has produced that fresh letters of posting issued to the workmen by Shri Angle and the letters issued to the workmen by the Party II (i) company and the same are at Exb. E-1 colly, E-2 colly, E-7, E-8, E-12, & E-13.

12. It may be mentioned that the contents of letters of posting at Exb. W-3, W-10, W-13 & W-21 and the subsequent posting orders at Exb. E-1, E-2, E-7 & E-12 are substantially the same. All these letters dated 1-11-91 were issued to the workmen by Shri Angle, whereby Shri Angle had informed the workmen that they were posted at the ice plant of the Party II (i) company with immediate effect and that they would be under supervision and control of the company. The letters at Exb. W-3, colly W-10, W-13 and W-21 stated that during the period of posting, the company would pay wages to these workmen. The amount/wages payable by the company was left blank. The evidence of R. Borkar indicates that he had not accepted these letters because of the said blanks and as such Shri Angle had issued fresh letters of posting at Exb. E-1, E-2, E-3 & E-12 specifying the amount payable to each of the workmen by the company and other contents being the same Shri R. Borkar has deposed that on receipt of these letters the company had also issued letters to the workmen, which are at Exb. W-2, W-8, W-12 & W-18. The Party II (i) company has also produced copies of these letters at Exb. E-1 colly, E-2 colly, E-8 & E-13. By these letters, the company had informed the workers that in view of the letters dated 1-11-91, issued by their employer, Party II (ii) Shri Angle, they were being posted at the ice plant of the Party II (i) company and that they would be under the control & supervision of the company. In the claim statement, the workmen had stated that they were in the employment of the company even prior to issuance of these letters. They have averred that Shri Angle and the company had entered into a conspiracy and issued these fraudulent posting letters only to deprive the workmen of their benefits under the I. D. Act. Needless to state, it is not sufficient to allege conspiracy or fraud. The party making such allegations is required to give full particulars of fraud. In the instant case, the workmen have not given any such particulars. Though the workmen have claimed that they were in employment of Party II (i) company prior to issuance of the posting letters dated 1-11-91, as stated earlier, they have not adduced any evidence to substantiate the said contention. It is also to be

noted that these letters were also signed by the workmen. The workmen, Shri Anand Naik, Ambesh Gaitonde, Rafiq Shaikh & Babi Korgaonkar deposed before this Tribunal, have identified their signatures on the posting letters issued by Party II (ii) Angle as well as by Party II (i) company. These workmen have stated that Shri Ramdas Borkar had obtained their signature on the said letters. These workmen have not explained as to why they had signed the said posting letters as it is not their case that they were forced or coerced by said Borkar into signing the said letters. The workmen had neither complained to the company that the manager had obtained their signatures on the posting letters nor protested issuance of posting orders despite being in service prior to 1-11-91 and this conduct falsifies the contention of the workmen that these letters are fraudulent.

13. It is also pertinent to note that the witness-1 Anand Naik has admitted that in addition to the salary paid by Party II (i) company he was also paid salary of Rs. 300/- by Party II (ii) Shri Angle until 30-11-91. He has stated that Party II (ii) Shri Angle settled all his dues. Witness-2 Ambesh Gaitonde has also deposed that he was paid Rs. 400/- per month by Shri Ramakant Angle and that this amount was paid by Shri Angle until November, 1992. The witness-4, Shri Babi Korgaonkar has deposed that his salary was Rs. 750/- per month. He has deposed that as per the wage register at Exb. E-3 he was paid salary of Rs. 350/- per month. He has deposed that Shri Ramakant Angle used to pay to him Rs. 400/- per month. The witness-3 Shri Rafiq Shaikh has deposed that his salary was Rs. 750/- per month. This witness has also admitted at the time of payment of wages, that Party II (i) company used to obtain his signature on the wage register. The wages register at Exb. E-3 shows that during the said period the Party II (i) company had paid to him Rs. 350/-. This witness has denied the suggestion that the balance amount of Rs. 400/- was paid to him by Shri Ramakant Angle. This statement cannot be believed, as had the Party II (i) company paid the entire salary of Rs. 750/- the same would have reflected in the wage register. Based on the wage register at Exb. W-3, it can be inferred that as stipulated in the posting order, the Party II (i) company had paid to this witness only Rs. 350/- per month and just as the case with the other workmen, the balance amount of Rs. 400/- was paid by Shri Ramakant Angle. Even otherwise this witness has admitted that Shri Angle was paying wages to him whenever he put in extra hours of work. The letter dated 22-3-93 at Exb. 20 also indicates that Shri Ramakant Angle had himself shown an amount of Rs. 10,000/- as payable towards one month salary of the workmen. If these workmen were not the employees of Shri Ramakant Angle, there would be no reason for him to pay salary to these workmen and to take over the liability of the workmen allegedly employed by the Party II (i) company. The evidence of Shri R. Borkar also indicates that sometime in 1993, the workmen Shri Satyawan Mamlekar, Shekhar Dessai, Rafiq Shaikh (witness-3), Babi Korgaonkar (witness-4) & Santan Diniz had made application to the Party II (i) company to employ them in the ice plant & that these workmen were employed by the Party II (i) company as fresh employees. These workmen had not applied for re-employment and had not objected for appointment as fresh appointees. These circumstances also indicate that these workmen were not the employees of the Party II (i) company prior to 30th November, 1992. The fact that the workmen were issued letters of posting by Shri Ramakant Angle & that they had not complained about the same and had further accepted salary from Shri Ramakant Angle itself proves that the workmen are the employees of Shri Ramakant Angle.

14. The workmen have heavily relied upon the wage slips for March, 1992 at Exb. W-1, W-9, W-19, and provident slips at Exb. W-17 in order to prove that they are the employees of the Party II (i) company. These wage slips prove that the Party II (i) company had paid Rs. 400/- each to the workmen Anand Naik and Ambesh Gaitonde and had paid Rs. 350/- to the workman Babi Korgaonkar towards wages for the month of May, 1992. The provident slips at Exb. W-17 also proves that certain amount was deducted from the salary of the workmen towards provident fund. The letters at Exb. W-4 & W-5 also indicate that these workmen had requested the Party II (i) company to grant advance for Ganesh Chaturthi. It is pertainent to note that the company had not paid the entire wages of the workmen but as per the posting orders at Exb. E-1, E-2, E-7 & E-12 issued by Shri Angle, the company was required to pay certain amount of wages to the workmen and was required to exercise control and supervision over these employees. Hence, the wage referred to in the said wage slips were paid by the company as per the agreement with the employer Shri Ramakant Angle. Since the company was paying the part salary, it was also required to deduct provident fund contribution and grant advances. This being the case, mere facts that the company had paid certain amount towards wages, granted advances or deducted provident fund cannot prove employer-employee relationship between the Party II (i) company and the workmen.

15. In the case of the Manager M/s. Pyarchand Kesarimal Porwal Bidi Factory v/s Omkar Laxman Thenge & ors. AIR 1970 SC823, the Apex Court has held that *"A contract of service being incapable of transfer unilaterally a transfer of service from one employer to another can only be effected by a tripartite agreement between the employer, the employee and the third party, the effect of which would be to terminate the original contract of service and to make a new contract between the employee and the third party. So long as the contract of service is not terminated, a new contract is not made and the employee continues to be in the employment of the employer. When an employer orders him to do a certain work for another person, the employee still continues to be in his employment. The employee has the right to claim his wages from the employer and not from the third party. Such third party-hirer may pay his wages but that is because of his agreement with the employer. The hirer may also exercise control and direction in the doing of the thing for which he is hired or even the manner in which it is to be done. But the hirer third party cannot dismiss him. The right of dismissal vests in the employer."*

16. In the instant case, the workmen were the employees of Shri Ramakant Angle. The employer, Shri Ramakant Angle had not terminated the contract of service with the workmen but had merely posted them to the ice factory of the Party II (i) company. The workmen had accepted the posting orders without protest and had started working for the Party II (i) company. This fact indicates that they had conceded for such posting. The employer Shri Angle had paid to these workmen part of their salary even after they were posted at the ice plant and this fact also indicates that there was no termination of original contract of service. The mere fact that the Party II Company had paid part of the salary to these workmen also does not amount to entering into a new contract with the workmen as the said payment was made and power of control and supervision was exercised because of the agreement with the employer and as per the terms of the posting order. This being the case, despite their posting at the ice plant the workmen continued to be employees of the Party II (ii) Shri Angle. Under the circumstances, the workmen have failed to prove that they are the employees of the Party II (i) company and not of the Party II (ii) Shri Ramakant Angle. Hence, the issue No. 1 is answered in the negative and issue No. 4 is answered in the affirmative.

17. *Issue No. 2 & 3:* Both these issues are interconnected and hence are taken up together for discussion. The workmen had averred that sometime in the year 1985-86, the Party II (i) company had closed down its business of manufacture of soft drinks and had dismissed the workers employed therein. The workers had challenged their termination and the reference being IT/25/86 is pending before the Tribunal. The workmen have stated that the company had terminated their services during the pendency of the reference, without seeking permission of the Tribunal under Sec. 33 of I. D. Act. The workmen have averred that the termination of their services is in contravention of Sec. 33 of I.D. Act and hence the same is illegal. It is to be noted that in the evidence before this Tribunal none of the workmen have deposed about pendency of any dispute before the Tribunal and contravention of provisions of Sec. 33 of the I. D. Act by the Party II (i) company. This being the case there is absolutely no evidence to prove that any reference was pending before the Tribunal and that the services of the workmen were terminated during the pendency of the reference.

18. It is also pertinent to note that the workmen were not the employees of the Party II (i) company but were temporarily posted at the disposal of the company by their employer Shri Ramakant Angle. This being the case the company had no right to dismiss the workmen. In the instant case, the company had not terminated the services of these workmen, but on termination of the agreement at Exb. E-16 by Shri Angle vide letter at Exb. E-17, the Party II (i) company vides letters dated 30-11-92 had discontinued the posting of the workmen at the ice plant and had directed them to report to their employer, Shri Ramakant Angle, for further orders in connection with their employment. These letters dated 30-11-92 are at Exb. W-6, W-22, E-1 colly and E-2 colly. These letters cannot be construed as termination orders. Consequently it cannot be held that the Party II (i) company had illegally terminated the services of these workmen in contravention of Sec. 33 of I.D. Act. Hence, issue No. 2 & 3 are answered in the negative.

19. *Issue No. 5:* The workmen have failed to prove that as on 30-11-92 there was employee-employer relationship between them and that the Party II (i) company had illegally terminated their services. This being the case the workmen are not entitled for any relief as against the Party II (i) company. In para 18 (f) of the claim statement, the workmen had challenged the authority and legality of the Party II (ii) Shri Angle to issue letters dated 30-11-92 to each of the workmen. The workmen have not adduced any evidence before this Tribunal to prove that pursuant to letter dated 30-11-92 issued

by the Party II (i) company, they had reported to Shri Angle and that he had terminated their services or refused employment to them or that he had issued any letter dated 30-11-92, as claimed in para 18 (f) of the claim statement. In the absence of such evidence, the workmen are not entitled for any relief as against the Party II (ii) Shri Angle.

20. Under the circumstances and in view of discussion supra, I pass the following order:

Order

1. It is hereby held that M/s. Crunet Aerated Waters Pvt. Ltd., Margao was not the employer in respect of the workmen namely:

   S/Shri Anand Naik.
   Shri Shekar Dessai.
   Shri Francisco Fernandes.
   Shri Rafiq Shaikh.
   Shri Babi Korgaonkar.
   Shri Santan Diniz.
   Shri Satyavan Mamlekar.
   Shri Ambesh Dinkar.

2. It is held that these workmen were the employees of Shri Ramakant Angle.

3. The workmen have failed to prove that their employer Shri Ramakant angle had terminated their services illegally or unjustifiably.

4. The workmen are not entitled for any relief.

   No orders as to costs.

   Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 16-04-2009 in reference No. IT/51/2004 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 22nd June, 2009.

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT AT PANAJI

(Before Smt. Anuja Prabhudessai,
Hon'ble Presiding Officer)

Ref. IT/51/2004

Shri Gabby G. Pereira,
C/o Franky Pereira,
Xirro, Carmona-Goa. ..... Workman/Party I

V/s

M/s. Royal Goan Beach
Resort P. Ltd.,
M/s. Haathi Mahal
Resort Hotel,
Mobor,
Cavelossim, Goa. ..... Employer/Party II

Workman/Party I represented by Shri B. B. Naik.

Employer/Party II represented by Adv. M. S. Bandodkar.

AWARD

(Passed on this 16th day of April, 2009)

By order dated 23-11-2004, the Government of Goa, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the action of the management of M/s. Royal Goan Beach Resort P. Ltd., Haathi Mahal Resort Hotel, Cavelossim, in terminating the services of Shri Gabby Pereira, Pool Attendant, with effect from 4-11-2003, is legal and justified?

(2) If not, what relief the workman is entitled to?"

2. Notices were issued to both parties. The Party I filed his claim statement at Exb. 4. The Party II filed its written statement at Exb. 6. The rejoinder of the Party I is at Exb. 7.

3. The Party I was in service of the Party II as a Captain from 1-3-2000 till the date of his termination i.e. till 4-11-2003. The Party I has stated that he was employed by the Party II to carry out permanent nature of work. The Party I further stated that in order to deprive him permanency and the facilities of permanent workmen, the Party II engaged in unfair labour practice by giving artificial breaks and by forcing him to sign a contractual appointment. The Party I stated that he was assured by the Party II that his services would be

regularized. However, instead of regularizing his services, the Party II terminated his services w.e.f. 4-11-2003. The Party I has stated that he had rendered continuous services of 240 days in the twelve months preceding his termination. The Party I has stated that the Party II has violated Section 25-F of the Industrial Disputes Act, 1947. The Party I has stated that Party II had engaged more than 110 workmen despite which Party II did not seek permission from the appropriate Government and his thereby violated provisions of Chapter V-B of the Industrial Disputes Act, 1947. The Party I, therefore, claimed that his termination is illegal and unjustified and he has sought reinstatement in service with full back wages with continuity in service.

4. The Party II has stated that the appointment of Party II was for a fixed term period specified in the contractual agreement which was accepted by the Party I. The Party II has denied that the Party I was appointed on a regular post or that he was assured that he would be regularized. The Party II further stated that the termination of the Party I was on account of non-renewal of the contract of appointment and as such, the provisions of Sec. 25-F are not applicable. The Party II has further stated that the Party I is gainfully employed and that he is not entitled for any reliefs.

5. Based on the aforesaid pleadings, following issues were framed at Exb. 8:

ISSUES

1. Whether the Workman/Party I proves that he was employed with the Employer/ /Party II as a Pool Attendant on permanent post continuously from 1-3-2000 till the date of his termination?
2. Whether the Workman/Party I proves that the termination of his services by the Employer/Party II w.e.f. 4-11-2003 is illegal and unjustified?
3. Whether the Party II proves that the appointment of the Workman/Party I with the Employer/Party II was for fixed term period?
4. Whether the Employer/Party II proves that the termination of the services of the Workman/Party I is the result of non-renewal of contract of employment?
5. Whether the Employer/Party II proves that the Workman/Party I is gainfully employed?
6. Whether the Workman/Party I is entitled to any relief?
7. What Award?

6. The matter was posted for evidence. However, during the pendency of the proceedings, the Party I as well as the Representative of the Party II remained present before the Tribunal on 2-4-2009 alongwith their Representative/Advocate and stated that they have settled the matter amicably. The parties have filed the consent terms at Exb. 13. These terms are duly signed by the parties and the said terms are acceptable to them. In my opinion, these terms are in the interest of the workman and hence these terms are taken on record and the Order is passed as under:-

ORDER

1. It is agreed between the parties that the management of M/s. Royal Goan Beach Resort at Haathi Mahal, Mobor, Cavelossim, Salcete-Goa, shall pay in total a sum of Rs. 20,911/- (Rupees Twenty thousand nine hundred eleven only) to Shri Gabby Pereira, by way of 2 installments:

(a) 1st installment of Rs. 10,000/- (Rupees Ten thousand only) bearing cheque No. 12564 dated 1-4-2009 drawn on HDFC Bank, payable at par.

(b) 2nd installment of Rs. 10,911/- (Rupees Ten thousand nine hundred eleven only) bearing cheque No. 12492 dated 20-4-2009 drawn on HDFC Bank payable at par.

2. The above amount of Rs. 20,911/- (Rupees Twenty thousand nine hundred eleven only) shall include all his claims arising out of the present reference No. IT/51/2004 and his employment, including any claims of earned wages, bonus, gratuity, leave encashment, retrenchment compensation, ex-gratia etc., or any other claim which can be computed in terms of money.

3. It is agreed that Shri Gabby Pereira shall accept the said amount as mentioned in the clause (1) hereinabove in full and final settlement of all his claims arising out of the present reference and arising out of his employment including any claim of earned wages, bonus, gratuity, leave encashment, retrenchment compensation, ex-gratia, etc. or any other claim which can be computed in terms of money, in complete satisfaction of all his claims including the claim made in the present reference No. IT/51/2004 and further confirm that he shall have no claim of whatsoever nature against the company including any claim of reinstatement and/or re-employment.

No order as to costs. Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal &
Labour Court.

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Notification

No. 28/1/2009-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 16-04-2009 in reference No. IT/67/2004 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

N. S. Dharwadkar, Under Secretary (Labour).

Porvorim, 22nd June, 2009.

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IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT AT PANAJI

(Before Smt. Anuja Prabhudessai,
Hon'ble Presiding Officer)

Ref. IT/67/2004

Shri Joaquim Goes,
H. No. 230, Alfonso Ward,
Cavelossim-Goa. ..... Workman/Party I

V/s

M/s. Royal Goan Beach
Resort P. Ltd.,
M/s. Haathi Mahal
Resort Hotel,
Mobor,
Cavelossim, Goa. ..... Employer/Party II

Workman/Party I is represented by Shri B. B. Naik.

Employer/Party II is represented by Adv. M. S. Bandodkar.

AWARD

(Passed on this 16th day of April, 2009)

By order dated 6-12-2004, the Government of Goa, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the action of the management of M/s. Royal Goan Beach Resort P. Ltd., Haathi Mahal Resort Hotel, Cavelossim, in terminating the services of Shri Joaquim Goes, Shop Supervisor, with effect from 13-2-2003, is legal and justified?

(2) If not, what relief the workman is entitled to?"

2. Notices were issued to both parties. The Party I filed his claim statement at Exb. 4. The Party II filed its written statement at Exb. 5. The Rejoinder of the Party I is at Exb. 6.

3. The Party I was in service of the Party II as a Front Office Assistant from 20-10-2000 till the date of his termination. The Party I has stated that he was employed by the Party II to carry out permanent nature of work. The Party I further stated that inorder to deprive him permanency and the facilities of permanent workmen, the Party II engaged in unfair labour practice by giving artificial breaks and by forcing him to sign a contractual appointment. The Party I stated that he was assured by the Party II that his services would be regularized. However, instead of regularizing his services, the Party II terminated his services. The Party I has stated that he had rendered continuous services of 240 days in the twelve months preceding his termination. The Party I has stated that the Party II has violated Section 25-F of the Industrial Disputes Act, 1947. The Party I has stated that Party II had engaged more than 110 workmen despite which Party II did not seek permission from the appropriate Government and his thereby violated provisions of Chapter V-B of the Industrial Disputes Act, 1947. The Party I, therefore, claimed that his termination is illegal and unjustified and he has sought reinstatemnet in service with full back wages with continuity in service.

4. The Party II has stated that the appointment of Party II was for a fixed term period specified in the contractual agreement which was accepted by the Party I. The Party II has denied that the Party I was appointed on a regular post or that he was assured that he would be regularized. The Party II further stated that the termination of the Party I was on account of non-renewal of the contract of appointment and as such, the provisions of Sec. 25-F are not applicable. The Party II has further stated that the Party I is gainfully employed and that he is not entitled for any reliefs.

5. Based on the aforesaid pleadings, following issues were framed at Exb. 8:

ISSUES

1. Whether the Workman/Party I proves that he was employed with the Employer/Party II as a Gardener on the regular post continuously from 20-10-2000 till the date of his termination?
2. Whether the Workman/Party I proves that the termination of his services by the Employer/Party II is illegal and unjustified?
3. Whether the Party II proves that the appointment of the Workman/Party I with the Employer/Party II was for fixed term period?
4. Whether the Employer/Party II proves that the termination of the services of the Workman/Party I is the result of non-renewal of contract of employment?
5. Whether the Employer/Party II proves that the Workman/Party I is gainfully employed?
6. Whether the Workman/Party I is entitled to any relief?
7. What Award?

6. The matter was posted for evidence. However, during the pendency of the proceedings, the Party I as well as the Representative of the Party II remained present before the Tribunal on 2-4-2009 alongwith their Representative/Advocate and stated that they have settled the matter amicably. The parties have filed the consent terms at Exb. 9. These terms are duly signed by the parties and the said terms are acceptable to them. In my opinion, these terms are in the interest of the workman and hence these terms are taken on record and the Order is passed as under:-

ORDER

1. It is agreed between the parties that the management of M/s. Royal Goan Beach Resort at Haathi Mahal, Mobor Cavelossim, Salcete-Goa, shall pay in total a sum of Rs. 32,108/- (Rupees Thirty two thousand one hundred eight only) by way of 3 installments:

(a) 1st installment of Rs. 10,000/- (Rupees Ten thousand only) bearing cheque No. 12202 dated 1-4-2009 drawn on HDFC Bank, payable at par.

(b) 2nd installment of Rs. 10,000/- (Rupees Ten thousand only) bearing cheque No. 12202 dated 20-4-2009 drawn on HDFC Bank payable at par.

(c) 3rd installment of Rs. 12,108/- (Rupees Twelve thousand one hundred eight only) bearing cheque No. 012215 dated 18-4-2009 drawn on HDFC Bank payable at par.

2. The above amount of Rs. 32,108/- (Rupees Thirty two thousand one hundred eight only) shall include all his claims arising out of the present reference No. IT/67/2004 and his employment, including any claims of earned wages, bonus, gratuity, leave encashment, retrenchment compensation, ex-gratia etc. or any other claim which can be computed in terms of money.

3. It is agreed that Shri Joaquim Goes shall accept the said amount as mentioned in the clause (1) hereinabove in full and final settlement of all his claims arising out of the present reference and arising out of his employment including any claim of earned wages, bonus, gratuity, leave encashment, retrenchment compensation, ex-gratia, etc. or any other claim which can be computed in terms of money, in complete satisfaction of all his claims including the claim made in the present reference No. IT/67/2004 and further confirm that he shall have no claim of whatsoever nature against the company including any claim of re-instatement and/or reemployment.

No order as to costs. Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal &
Labour Court.

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State Directorate of Craftsmen Training

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Order

No. 2/123/2009/EST/SDCT(15)/5008

Read: (1) Order No. 2/123/2009/EST/SDCT/894 dated 21-3-2005.
(2) Order No. 2/123/2009/EST/SDCT/397 dated 08-5-2006.
(3) Order No. 2/123/2009/EST/SDCT/385 dated 29-1-2007.
(4) Order No. 2/123/2009/EST/SDCT/635 dated 30-1-2008.
(5) Order No. 2/123/2009/EST/SDCT/ dated 27-5-2008.
(6) Order No. 2/123/2009/EST/SDCT/7767 dated 02-12-2008.

The ad hoc promotion of Shri Ravikiran Pawaskar to the post of Principal (Group B Gazetted) is hereby

extended for further period of six months from 21-09-2009 to 20-03-2010 with the same terms and conditions stipulated in the above cited orders.

This is issued with the concurrence of the Goa Public Service Commission vide it's communication No. COMM/II/11/60(1)/03-09/(part file)/1047 dated 14-7-2009.

By order and in the name of the Governor of Goa.

Aleixo F. da Costa, State Director of Craftsmen Training & ex officio Joint Secretary.

Panaji, 1st September, 2009.

Department of Legal Metrology

Office of the Controller, Legal Metrology

Order

No. 2/18/77-CLM/523/1604

Read: Order No. 2/18/77-CLM/508/1570, dated 14th August, 2009 sanctioning Leave to Shri N. M. Naik, Controller, Legal Metrology,

Shri V. R. Naik, Assistant Controller, Legal Metrology, shall hold the charge on officiating basis, of the post of the Controller, Legal Metrology and ex officio, Under Secretary, during the leave period of 18 days with effect from 25-08-2009 to 11-09-2009, of Shri N. M. Naik, Controller, Legal Metrology, Panaji in addition to his own duties.

By order and in the name of the Governor of Goa.

A. K. Wasnik, Secretary, Legal Metrology.

Panaji, 21st August, 2009.

Department of Personnel

Order

No. 6/3/2008-PER(Part)

Shri Gurudas P. Pilarnekar, Project Director, District Rural Development Agency, North, Panaji, shall hold charge of the post of Chief Executive Officer, Zilla Panchayat, North, Panaji, in addition to his own duties, with immediate effect and until further orders.

Consequently, Shri Vinesh V. Arlekar, Chief Executive Officer, Zilla Panchayat, North, Panaji, is posted as Director of Provedoria (IPA).

Shri Arlekar shall draw his salary against the vacant post of Director (Admn.), Goa Medical College, Bambolim.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 20th August, 2009.

Order

No. 5/15/2002-PER

Read: Order No. 6/18/97-PER dated 18-08-2006.

In terms of Rule 17 of the Goa Civil Service Rules, 1997 and on the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/12/42(1)/02-06/226 dated 15-07-2009, the Governor of Goa is pleased to declare Smt. Madhura V. Naik, Junior Scale Officer of Goa Civil Service, to have satisfactorily completed her period of probation and confirm her in the Junior Scale of Goa Civil Service, with immediate effect.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 20th August, 2009.

Order

No. 6/2/2005-PER

Read: Order No. 6/2/2005-PER dated 10-08-2009.

The transfer and posting of Ms. Jessie Freitas, Project Officer, Directorate of Technical Education, Porvorim and Smt. Vitoria Irene Sequeira, Deputy Director (Admn.), Directorate of Women & Child Development, made vide Order dated 10-08-2009, read in preamble, shall be kept in abeyance, until further orders.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 20th August, 2009.

Order

No. 6/2/2002-PER(Part)

Shri Prasanna Acharya, Additional Collector (South-I) shall hold charge of the post of Chief Officer, Margao Municipal Council, in addition to his own duties, with immediate effect and until further orders.

Consequently, Shri Y. B. Tavde, Chief Officer, Margao Municipal Council, shall report to the Personnel Department, for further posting. He shall draw his salary on the 'Leave & Training Reserve' post during the period of awaiting posting

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 21st August, 2009.

Order

No. 7/2/99-PER-Part-II (A)

The Governor of Goa is pleased to appoint Shri Narendra Kumar, IAS (AGMUT: 88), as Secretary to Governor, Raj Bhavan, with immediate efffect.

Shri Narendra Kumar shall continue to hold the additional charge of the work/Departments as indicated below, until further orders.

1. Transport
2. Information & Publicity
3. Archives & Archaelogy
4. Museum
5. Printing & Stationery.

By order and in the name of the Governor of Goa.

Yetindra M. Maralkar, Joint Secretary (Personnel).

Porvorim, 21st August, 2009.

Department of Public Health

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Order

No. JS(H)/Misc/2009

Government is pleased to transfer the below mentioned Medical Officers in the Directorate of Health Services with immediate effect in the public interest and post them to the places indicated against their names:

Sr. No.	Name of the Officers	Present place of posting	Posted on transfer at
1	2	3	4
1.	Dr. Rajendra Tamba, Medical Officer/State Epidemiologist	Epidemiological Cell, DHS, Panaji	Rural Medical Dispensary, Chorao.
2.	Dr. Vedpal Tari, Medical Officer	Rural Medical Dispensary, Chorao	Primary Health Centre, Betki.

Dr. Rajendra Tamba, Medical Officer shall move first.

Dr. Jose D'Sa, Health Officer, National Vectorborne Diseases Control Programme shall take over the charge of Nodal Officer/State Epidemiologist besides his own duties immediately with direction to follow day-to-day monitoring, precautionary measures and treatment of Swine flu. The day-to--days reports be furnished to the concerned authorities i.e. Director of Health Services, Secretary, (Health) and Hon'ble Minister for Health.

By order and in the name of the Governor of Goa.

D. G. Sardessai, Joint Secretary (Health).

Porvorim, 3rd August, 2009.

Department of Revenue

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Notification

No. 23/26/2008-RD

Whereas by Government Notification No. 23/26/ /2008-RD dated 24-09-2008 published in Series II No. 27 of the Official Gazette, dated 03-10-2008 and in two newspapers (1) "Herald" dated 27-09-2008, (2) "Sunaparant" dated 27-09-2008, it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification (hereinafter referred to as the said land) was needed for the public purpose viz. Land Acquisition for const. of B/6 distributory from ch. 0.00 km. to 5.820 kms. of R.B.M.C. of T.I.P. (Addl. Land) in Torcem Village of Pernem Taluka.

And whereas, the Government of Goa (hereinafter referred to as "the Government") after considering the report made under sub-section (2) of Section 5-A the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, therefore, the Government hereby declares, under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also hereby appoints, under clause (c) of Section 3 of the said Act, the Special Land Acquisition Officer (N), Goa Tillari Irrigation Development Corporation, Karaswada, Colvale road, Bardez-Goa to perform the functions of the Collector for all proceedings hereinafter to be taken in respect of the said land and directs him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the Special Land Acquisition Officer (N), Goa Tillari Irrigation Development Corporation, Karaswada, Colvale road, Bardez-Goa till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Taluka: Pernem *Village:* Torcem

Survey No./ /Sub-Div. No.		Names of the persons believed to be interested	Approx. area in sq. mts.
1		2	3
166/0	O:	1. Shree Devi Mauli Panchayatan Varad Committee, Torcem (Cabes de Casal).	6580
228/11	O:	1. Vishnu Ganesh Deshprabhu.	188
		2. Arjun Laximan Shetye.	
		3. Yenba Sagun Shetye.	
		4. Sadu Krishna Shetye.	
		5. Keshav Gopal Shetye.	
		6. Mukund Narayan Shetye.	
		7. Yeshwant Gangaram Shetye.	
		8. Shankar Shiva Shetye.	
		9. Narayan Yeshwant Shetye.	
		10. Raghunath Atmaram Shenvi Dessai.	
		11. Jocky Fernandes.	
187/15	O:	1. Harishchandra Raghoba Parab.	1058
		2. Ladu Soma Shetye.	
		3. Vishnu Ganesh Deshprabhu.	
	T:	1. Jaidev Narayan Tandel. (Sl. No. 3)	
		2. Savitri Laximan Bhagat.	
		3. Bhudaji Dattaram Bhagat.	
		4. Bhagirati Bhiva Tandel.	
153/1	O:	1. Vishnu Ganesh Deshprabhu.	2057
	T:	1. Laximan Baburao Shirodkar.	
		2. Balkrishna Bharma Gurav.	
150/7	O:	1. Prabhakar Sitaram Parab.	76
		2. Harishchandra Raghoba Parab.	
		3. Babu Rama Naik.	

Boundaries :

North : S. No. 166/0 and 228/10, 187/15, 150/7, 153/1.

South : S. No. Nalla & 166/0 and 229, 187/15, 150/7, 153/1, 2.

East : State Boundary and 228/11, Nalla, 154, 187/16.

West : Nalla and S. No. 228/11, 153/1, 2, 187/15, 150/7.

Total: 9,959

By order and in the name of the Governor of Goa.

D. M. Redkar, Under Secretary (Revenue).

Porvorim, 26th August, 2009.

Notification

No. 23/56/2008-RD

Whereas by Government Notification No. 23/56/ /2008 dated 02-12-2008 published on pages 941 & 942 of Series II No. 37 of the Official Gazette dated 11-12-2008 and in two newspapers (1) "Sunaparant" dated 05-12-2008 and (2) "Herald" dated 05-12-2008, it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land, specified in the Schedule appended to the said Notification (hereinafter referred to as the said land) was needed for the public purpose, viz. Land Acquisition for construction of Sanquelim distributory from ch. 4.60 kms. to 7.36 kms. in Sarvona Village of Bicholim Taluka (Addl. area).

And whereas, the Government of Goa (hereinafter referred to as the "Government") being of the opinion that the acquisition of the said land is urgently necessary, hereby applies the provisions of sub-section (1) of Section 17 of the said Act and directs that the Collector appointed under paragraph 2 below, shall, at any time, on the expiry of fifteen days from the date of the publication of the notice relating to the said land under sub-section (1) of Section 9 of the said Act, take possession of the said land.

Now, therefore, the Government hereby declares, under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also hereby appoints, under clause (c) of Section 3 of the said Act, the Special Land Acquisition Officer (N), Goa Tillari Irrigation Development Corporation, Karaswada, Mapusa, Bardez-Goa to perform the functions of the Collector for all proceedings hereinafter to be taken in respect of the said land and directs him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the Special Land Acquisition Officer (N), Goa Tillari Irrigation Development Corporation, Karaswada, Mapusa, Bardez-Goa till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Taluka: Bicholim *Village:* Sarvona

Survey No./ /Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
68/8 O:	Comunidade.	25
T:	1. Arjun Mukund Sawant.	
	2. Shiva Yeso Sawant.	
78/0 O:	1. Bhiva Laxman Sawant.	515
	2. Guno Laxman Sawant.	
	3. Babaji Laxman Sawant.	
	4. Sahadeo Laxman Sawant.	
	5. Thankamma Chidambaram Pillai.	
	6. The Executive Engineer, Works Division X VII (PHE) G.F.D.I. & II, Porvorim.	
T:	Nil.	
	Boundaries :	
	North : S. No. 78, 68/7.	
	South : S. No. 79/1, 68/8.	
	East : S. No. 78, 57/19.	
	West : S. No. 78, 68/8.	
	Total:	540

By order and in the name of the Governor of Goa.

D. M. Redkar, Under Secretary (Revenue-I).

Porvorim, 26th August, 2009.

Notification

No. 23/44/2008-RD

Whereas by Government Notification No. 23/44/ /2008-RD dated 07-10-2008 published on page 822 of Series II No. 30 of the Official Gazette, dated 23-10-2008 and in two newspapers (1) "Times of India" dated 12-10-2008 and (2) "Sunaparant" dated 12-10-2008, it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification (hereinafter referred to as the said land) was needed for the public purpose, viz. Land Acquisition for construction of Guest House at Gogol MBR, Margao.

And whereas, the Government of Goa (hereinafter referred to as "the Government") after considering the report made under sub-section (2) of Section 5-A the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, therefore, the Government hereby declares, under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also hereby appoints, under clause (c) of Section 3 of the said Act, the Special Land Acquisition Officer, S.I.P., Gogol, Margao-Goa to perform the functions of the Collector for all proceedings hereinafter to be taken in respect of the said land and directs him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the Special Land Acquisition Officer S.I.P., Gogol, Margao-Goa till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Taluka: Salcete *Village:* Raia

Survey No./ /Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
194 1 (Part)	1) Valmiki Faleiro.	3420
	2) Jeronimo D'Souza.	
	Boundaries :	
	North : S. No. 194/1.	
	South : S. No. 194/1.	
	East : S. No. 194/1.	
	West : Margao City.	

1	2	3
Taluka: Salcete		*City:* Margao
84/1 Part	1) Comunidade of Margao. 2) Government of Goa (PWD).	3350
	Boundaries : North : P. T. S. 84 Chalta 1. South : P. T. S. 84 Chalta 1. East : Village Raia. West : P. T. S. 84 Chalta 1.	
		Grand Total: 6,770

By order and in the name of the Governor of Goa.

D. M. Redkar, Under Secretary (Revenue-I).

Porvorim, 26th August, 2009.

Notification

No. 23/34/2008-RD

Whereas by Government Notification No. 23/34/ /2008-RD dated 01-08-2008 published at page 610 of Series II No. 20 of the Official Gazette, dated 14-08-2008 and in two newspapers (1) "The Navhind Times" dated 05-08-2008 (2) "Pudhari" dated 06-08-2008, it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act"), that the land specified in the Schedule appended to the said Notification (hereinafter referred to as the said land) was needed for the public purpose, viz. Land Acquisition for 17,500 sq. mts. of land at Survey No. 2/0, (2/1) of Guleli Village, Satari Taluka for the Reservoir of Open type Bandhara at Ganjem.

And whereas, the Government of Goa (hereinafter referred to as "the Government") after considering the report made under sub-section (2) of Section 5-A the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, therefore, the Government hereby declares, under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also hereby appoints, under clause (c) of Section 3 of the said Act, the Special Land Acquisition Officer (N), Goa Tillari Irrigation Development Corporation, Karaswada, Colvale Road, Bardez-Goa to perform the functions of the Collector for all proceedings hereinafter to be taken in respect of the said land and directs him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the Special Land Acquisition Officer (N), Goa Tillari Irrigation Development Corporation, Karaswada, Colvale Road, Bardez-Goa till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Taluka: Satari *Village:* Guleli

Survey No./ /Sub-Div. No.	Name of the person believed to be interested	Area in sq. mts.
1	2	3
2/1	O: Dinaraj Vithal Dessai.	17,500
	Boundaries : North : River Madai. South : River Madai. East : River Madai. West : River Madai.	
		Total: 17,500

By order and in the name of the Governor of Goa.

D. M. Redkar, Under Secretary (Revenue-I).

Porvorim, 31st August, 2009.

Notification

No. 22/26/2008-RD

Whereas by Government Notification No. 22/26/ /2008-RD dated 16-09-2008 published on pages 726 to 727 of Series II No. 26 of the Official Gazette, dated 25-09-2008 and in two newspapers (1) "Herald" dated 20-09-2008 and (2) "Tarunbharat" dated 20-09-2008, it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act"), that the land specified in the Schedule appended to the said Notification (hereinafter referred to as the said land), was needed for the public purpose, viz. Land Acquisition for South Western Railway at

Sanvordem Station between Colem to Vasco-da--Gama Station.

And whereas, the Government of Goa (hereinafter referred to as "the Government") being of the opinion that the acquisition of the said land is urgently necessary, hereby applies the provisions of sub-sections (1) and (4) of Section 17 of the said Act and directs that the Collector appointed under paragraph 2 below, shall, at any time, on the expiry of fifteen days from the date of the publication of the notice relating to the said land under sub-section (1) of Section 9 of the said Act, take possession of the said land.

Now, therefore, the Government hereby declares, under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also hereby appoints, under clause (c) of Section 3 of the said Act, the Special Land Acquisition Officer, Konkan Railway Corporation Ltd., South Goa, Rawanfond, Navelim, Salcete, Goa, to perform the functions of the Collector, South Goa District, Margao-Goa, for all proceedings hereinafter to be taken in respect of the said land and directs him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the Special Land Acquisition Officer, Konkan Railway Corporation Ltd., South Goa, Rawanfond, Navelim, Salcete, Goa, till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Taluka: Quepem *Village:* Curchorem

Survey No./ /Sub-Div. No.		Names of the persons believed to be interested	Approx. area in sq. mts.
1		2	3
2	3 Part	O: Maria Silva Pinto. T: Nil.	56
2	2 Part	O: Empresa Industrial Krishna. T: Nil.	1540
3	9 Part	O: Gangabai Shamba Bandkar. T: Nil.	161
3	5 Part	O: Vishnu Rau Valaulikar. Shantaram Anand Rau Valaulikar. T: Nil.	32
1		2	3
		OR: Manguesh Raghuvir Bandodkar. Gangabai Shamba Bandekar. Manguesh Raghuvir Bandodkar.	
		Boundaries : North : Sy. No. 3/1, 7. South : Sy. No. 215. East : Sy. No. 1. West : Sy. No. 3/4.	
			Total: 1,789

By order and in the name of the Governor of Goa.

D. M. Redkar, Under Secretary (Revenue-I).

Porvorim, 31st August, 2009.

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Department of Town & Country Planning

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Order

Ref. No. 4/1/10/89/UDD/PF/05/3126

Government is pleased to extend ad hoc appointment for a further period of one year w.e.f. 01-01-2009 to 31-12-2009 of the belowmentioned officers:

Town Planner

1. Shri Rajesh Naik.
2. Shri Ranjit M. Borkar.
3. Shri Antonio P. Diniz.
4. Ms. Vertika Dagur.
5. Shri Rajindar Kumar Pandita.

This issues with the approval of the Goa Public Service Commission vide letter No. COM/II/11/50(2)/ /92/1320 dated 19-08-2009.

By order and in the name of the Governor of Goa.

Morad Ahmad, Chief Town Planner & ex officio Joint Secretary.

Panaji, 1st September, 2009.

Department of Transport

Directorate of Transport

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Notification

No. 5/9/90-TPT/2009/2132

In exercise of the powers conferred by clause (xii) of sub-rule (1) of Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts Motor Vehicle No. GA-03/T 9346 owned by St. Anthony Institute & Orphanage, Duler, Mapusa, Goa, from payment of tax due to this State, being a Charitable Institution.

By order and in the name of the Governor of Goa.

Arvind D. Loliyekar, Director of Transport and ex officio Joint Secretary (Tpt).

Panaji, 31st August, 2009.

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Notification

No. 5/9/9-TPT/2009/2133

In exercise of the powers conferred by clause (iv) of sub-rule (1) of Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts Motor Vehicle No. GA-08/T 3078 (Ambulance) owned by M/s. Borkar Nursing Home, Abade Faria Road, Margao, Goa, from payment of tax due to this State, as the same will be used for conveying patients to and from the said Hospital.

By order and in the name of the Governor of Goa.

Arvind D. Loliyekar, Director of Transport and ex officio Joint Secretary (Tpt).

Panaji, 31st August, 2009.

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Notification

No. 5/9/90-TPT/2009/2134

In exercise of the powers conferred by clause (xii) of sub-rule (1) of Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts Motor Vehicle No. GA-06/C 6928 owned by Holy Family Convent, Sancoale, Cortalim, Goa, from payment of tax due to this State, being a Charitable Institution.

By order and in the name of the Governor of Goa.

Arvind D. Loliyekar, Director of Transport and ex officio Joint Secretary (Tpt).

Panaji, 31st August, 2009.

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Notification

No. 5/9/9-TPT/2009/2135

In exercise of the powers conferred by clause (iv) of sub-rule (1) of Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts Motor Vehicle No. GA-08/U 2707 (Ambulance) owned by Sociedade De Fomento Industrial Pvt. Ltd., Vila Flores Da Silva, Margao, Goa, from payment of tax due to this State, as the same will be used for conveying patients to and from the said Hospital.

By order and in the name of the Governor of Goa.

Arvind D. Loliyekar, Director of Transport and ex officio Joint Secretary (Tpt).

Panaji, 31st August, 2009.

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Notification

No. 5/9/90-TPT/2009/2136

In exercise of the powers conferred by clause (xii) of sub-rule (1) of Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts Motor Vehicle No. GA-07/F 0329 owned by Society of Pilar, Pilar, Goa, from payment of tax due to this State, being a Charitable Institution.

By order and in the name of the Governor of Goa.

Arvind D. Loliyekar, Director of Transport and ex officio Joint Secretary (Tpt).

Panaji, 31st August, 2009.

Department of Women & Child Development

Directorate of Women & Child Development

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Notification

No. 2-109(5)-2008/DW&CD/1194

Read: Notification No. 2-107(31)-2005/DW&CD/ /2957 dated 31-3-2006.

In supersession of the Notification mentioned above and in exercise of the powers conferred by sub-sections (1) and (2) of Secion 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (Central Act 56 of 2000) as amended by The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (33 of 2006) the Government of Goa hereby reconstitutes the Juvenile Justice Board, Apna Ghar, Merces-Goa for the North Goa District and Margao, Salcete-Goa for the South Goa District consisting of the following persons for exercising the powers and discharging the duties conferred or imposed on such Board in relation to Juvenile in conflict with law under the said Act with immediate effect.

North Goa District

1. Chief Judicial Magistrate, North Goa District ... Principal Magistrate.
2. Smt. Prachi Khandeparkar ... Member.
3. Shri Gurunath Vinayak Dhume ... Member.

South Goa District

1. Chief Judicial Magistrate, South Goa District ... Principal Magistrate.
2. Smt. Auda Viegas ... Member.
3. Smt. Seema Salgaonkar ... Member.

The tenure of the Juvenile Justice Boards shall be for 3 years from the date of its constitution.

The Non-official members are entitled to a fixed honorarium of Rs. 500/- per sitting per member. There will be no separate TA/DA.

By order and in the name of the Governor of Goa.

Sanjiv Gadkar, Director & ex officio Joint Secretary (W&CD).

Panaji, 28th August, 2009.

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